

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe Railway that the Carrier is in violation of the terms of the agreement between the parties when,

(1) It requires the combination of the work of the telegrapher-cashier position with the work of the agent-telegrapher position at Eagle Lake, Texas each Monday beginning with Monday, September 19, 1949, compelling the regular occupant of said agent-telegrapher position to perform the rest day relief work and assume the duties of the telegrapher-cashier position in combination with that of his own assignment on such Mondays, as assigned rest day of said telegrapher-cashier.

(2) It requires the combination of the work of the agent-telegrapher position with the work of the telegrapher-cashier position at Eagle Lake, Texas, each Saturday beginning with Saturday, September 24, 1949, compelling the regular occupant of the telegrapher-cashier position to perform the rest day relief work and assume the duties of the agent-telegrapher position in combination with that of his own assignment on such Saturdays, an assigned rest day of said agent-telegrapher.

(3) The Carrier shall now compensate the senior idle extra telegrapher on the district on the basis of 8 hours at the straight time rate for each Monday and Saturday that the occupant of the positions named in paragraphs (1) and (2) above were used to perform rest day relief work on, and assume the duties of the position of the other; or, if no such idle extra telegrapher available, then the carrier shall compensate the regular occupant of the position of agent-telegrapher on Saturdays, and telegrapher-cashier on Mondays at Eagle Lake, Texas, on the basis of 8 hours at the time and one half rate for such days respectively that the violative practice is continued.

EMPLOYES' STATEMENT OF FACTS: Agreements between the parties bearing effective dates of December 1, 1938 and June 1, 1951 are in evidence.

Without prejudice to its position, as previously set forth herein, that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules, the Carrier further asserts that the Employees' claim for eight (8) hours at penalty time and one-half rates in behalf of (1) the agent-telegrapher on Saturdays and (2) the telegrapher-cashier on Mondays account not used on such days is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

Also, without prejudice to its position that the Employees' claim in the instant dispute is entirely without support under the Agreement rules and should be denied for the reasons previously expressed herein, the Carrier further asserts that the Employees' claim for eight (8) hours at time and one-half rates in behalf of the agent-telegrapher at Eagle Lake on Saturdays, retroactive to September 24, 1949, is improper for the reason that the claim in behalf of the agent-telegrapher was first presented to the Carrier by the Local Chairman in letter dated March 11, 1950, which is quoted in the Carrier's Statement of Facts, and the retroactive penalties are therefore necessarily limited by the provisions of the last sentence of Article V(i) of the Telegraphers' Agreement, effective December 1, 1938 and similar rule appearing as Article V, Section 10 of the Telegraphers' Agreement, effective June 1, 1951, both of which read as follows:

"Grievances, other than appeals on time claims or discipline, not presented within sixty (60) days from date alleged to have occurred, are barred from consideration. Time claims must be presented in writing to the Railway Company to be entitled to consideration, and any payment claimed will, if allowed, be restricted to a period commencing not earlier than thirty (30) days prior to date so presented."

* * * *

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier assigned the Agent-Telegrapher at Eagle Lake, Texas, Monday through Friday. It assigned the Telegrapher-Cashier, Tuesday through Saturday. On Mondays and Saturdays the one working performed some of the duties of the other. The Organization contends that such an arrangement is violative of the current Agreement.

The case is identical in principle with Award 6946. On the basis of the reasoning of that award, the claim cannot be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.