Award No. 7980
Docket No. TE-7640

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northwestern Pacific Railroad that:

A. Carrier violated the provisions of the Agreement between the parties hereto when it failed and refused to properly compensate the employes listed in paragraph B-(1), (2) and (3) of this claim.

B. Carrier shall now pay each of the following employes on the dates listed for eight (8) hours, at the pro rata hourly rate of pay, applicable at the stations named, in addition to any other compensation previously paid for such service on these dates:

(1) Vincent Savio, 3rd Telegrapher-clerk, Eureka, California, Christmas Day, December 25, 1954.

(2) C. M. Hinman, 3rd Telegrapher-clerk, Ukiah, California, Washington's Birthday, February 22, 1955.

(3) R. W. Chambers, Agent-telegrapher, Tiburon, California, Washington's Birthday, February 22, 1955.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the Northwestern Pacific Railroad Company, hereinafter referred to as the Carrier, and its Employes, represented by The Order of Railroad Telegraphers, bearing effective date of August 1, 1945 (Reprinted September 1, 1951, Including Revisions), hereinafter referred to as the Telegraphers' Agreement. There is also in evidence an Agreement between the parties signed at Chicago, Illinois, August 21, 1954, by and between the participating Eastern, Western and Southeastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, which Agreement (hereinafter referred to as the Chicago Agreement), was in effect on the dates involved in the instant claims. A copy of both the Telegraphers' Agreement and the Chicago Agreement is on file with your Board and by reference thereto, is hereby made a part of this dispute.

The dispute herein set forth was handled on the property in the usual manner to the highest officer designated by the Carrier to handle such disputes, in accordance with the Railway Labor Act, as amended. The Carrier refused to adjust the dispute on the property, leaving the Employes no alternative but to appeal to your Board.

"(g) General and Local Chairmen of the Organization will be furnished copies of all notices advertising vacant positions as well as copies of all assignment notices.

"(h) Except as provided in Rule 13(d), employes accepting non-schedule positions will hold rights to position vacated for ninety (90) days. After ninety (90) days, position will be advertised.

"(i) The Carrier reserves the right to reclassify the positions covered by this agreement when the requirements of its service make such change necessary.

"(j) A reclassification, or change in assigned hours, of a position shall not operate to create a new position."

To adopt the interpretation, the petitioner attempts to place on said agreement provisions by the claim in this docket, an extra unassigned employe would have to be considered both extra and assigned, a dual capacity diametrically opposed to that contemplated by the agreement.

The petitioner is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The Carrier asserts that it has conclusively established that the claimants were extra unassigned employes and that, therefore, the claim is without basis under the provisions of Section 1, Article II, of Agreement dated August 21, 1954. It is requested that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case involves the Claim of extra employes to holiday pay allegedly due them under Section 1, Article II of the August 21, 1954, National Agreement. In numerous Awards the Second and Third Divisions of this Board have held that "regularly assigned" employes, as that term has been traditionally understood in the railroad industry, are the only employes covered by said provision. See Third Division Awards 7430, 7431, 7432 and 7721; Second Division Awards 2052, 2169 and 2297. Claimants were not regularly assigned employes. Nor do Claimants receive support from Rule 11 of the Parties' Collective Agreement, which Rule is clearly concerned only with the "rate of pay".

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1957.