

Award No. 8193
Docket No. CL-7299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly the Scope and Rule 5-E-1 when positions of Telephone Switchboard Operators, East St. Louis, Illinois, Southwestern Division, were blanked on Saturdays, Sundays, and Holidays on first and second tricks and work assigned to similar employes of the Terminal Railroad Association of St. Louis, Mo.

(b) Each employe affected be paid a day's pay for each such day from September 3, 1949, until adjusted. (Docket W-690)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimants in this case had seniority standing in Group 2 on the Seniority Roster of the Former St. Louis Division, subsequently changed to the Southwestern Division.

Claims were presented in the usual way that the Rules Agreement was violated and that claimants should be compensated. This dispute was then progressed to the General Manager of the Western Region of the Carrier by means of a joint submission. The General Manager is "the chief operating

The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION.

The Carrier has established that there has been no violation of the applicable Agreement, and that the Unnamed Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute, arising out of the adoption of the 40-hour week, effective September 1, 1949, concerns the manner in which long-distance telephone calls are handled between Carrier's facilities in the East St. Louis Missouri-East St. Louis, Illinois, area and at Indianapolis on Saturdays, Sundays and holidays. On these days the Carrier's private branch telephone exchange at East St. Louis is closed.

It is claimed by the Employees that in violation of the Rules Agreement, the Telephone switchboard work on these days was transferred to another Carrier's employees covered by a different agreement.

On the other hand, the Carrier contends that the discontinuance of telephone service at East St. Louis of which complaint is made and the utilization of other means of handling telephone communications were consistent with and not in violation of agreement.

The Carrier has extensive operations in the East St. Louis—St. Louis area. Prior to September 1, 1949, the employees engaged in these operations worked a six day week and the Carrier's offices were open six days a week, with some of them open seven days.

Telephone service to and from the Carrier's offices and facilities were handled by three private branch telephone exchanges and in certain offices by additional commercial (Bell System) telephones. Two of these telephone exchanges were owned and operated by the Carrier. The other telephone exchange which served Carrier's facilities in Rankin Yard was owned and operated by another organization, the Terminal Railroad Association of St. Louis (herein referred to as the Terminal Company).

Prior to September 1, 1949, the Carrier's PBX system at St. Louis, which has extensions to the Freight and Passenger Traffic offices and to the offices of the Assistant to the General Manager, was manned by a switchboard operator on one shift, Mondays through Friday, and until noon Saturdays. The Carrier's PBX at East St. Louis, and at division headquarters in Terre Haute, were manned by a switchboard operator continuously, i.e., on each of three tricks. The Terminal Company exchange was also open continuously. All of these exchanges are connected to each other by trunk lines.

The Carrier, effective September 1, 1949, closed the Telephone Exchange at East St. Louis on Saturdays and Sundays. This was done following a notice posted August 16, 1949, which stated:

"Terre Haute, Indiana
August 26, 1949

"TO ALL EMPLOYEES:

"Effective September 1, 1949, the Telephone Exchange at E. St. Louis will be closed **DAILY, 11 P. M. to 7 A. M., and all day SATURDAY AND SUNDAY.**

"During the time that the Exchange is closed the following telephone numbers will be used for all incoming telephone calls to the Enginehouse and Yard Office at Rose Lake and Willows Tower:—

BRIDGE 3753..Yard Master—Rose Lake
Crew Dispatcher—Rose Lake

MAIN 6122..Enginehouse—Rose Lake
Chief Clerk, Yard Office—Rose Lake

BRIDGE 1216..Willows Tower—East St. Louis, Ill.

Telephone calls from PRR Telephones at East St. Louis and Rose Lake can be made at all times through the **Dial System**.

P.R.R. F-30—Telephone Trunk Line will be directly connected, Terre Haute P.R.R. Exchange to the Terminal Railroad Telephone Exchange at St. Louis. This connection will be used only for calls to and from facilities ordinarily served by the T.R.R.A., which includes Rankin Yard.

P.R.R. F-31—Telephone Trunk Line will be directly connected, Terre Haute P.R.R. Exchange to a telephone on Crew Dispatcher's desk at Rose Lake Yard Office."

As a result of the discontinuance of switchboard operator service at East St. Louis, the present claim was filed.*

During discussion of this claim, a joint committee was appointed to investigate the facts and although such an investigation was made and a report proposed, the report was not signed. The Employees assert that the report initially proposed fully supported their position; but before the committee could meet and complete the report "the Carrier's representative reversed himself and submitted another proposal prepared for signature and signed by himself" and that by his reversal, the Carrier's representative had "changed the agreed upon facts to support the Carrier's position, although during the interval of four months, no change had occurred in the operation to justify this."

Despite the fact that the proposed report was not signed or accepted by the Carrier's representative, the Employees rely upon it as containing the "agreed upon" facts in this case.

This Board, however, is unable to accept the statements in the unsigned report as constituting stipulated facts. Instead we must conclude that the members of the joint committee were simply unable to agree and as a consequence, we are presented with a record containing disputed facts. We must therefore draw our own conclusions from the record; and in doing so, bear in mind that this Board has repeatedly held that the one charging a violation of contract has the responsibility of establishing that charge to our satisfaction.

On the institution of the 40-hour week, the Carrier determined that with so many offices closed on Saturdays, Sundays and holidays, it would close the East St. Louis exchange on those days and have the necessary service handled by commercial telephone and/or by the message wires from St. Louis to division headquarters in Terre Haute.

Briefly, the Employees contend that calls formerly handled by them are now being handled by the telephone operators of the Terminal Company; that

*The closing of the exchange on the third trick is not involved here. It is the subject of another claim.

this constitutes a transfer of work in violation of the Rules; while the Carrier contends the Terminal Company operators have not supplanted its telephone operators at East St. Louis; that the work has not been transferred but rather eliminated on these days.

Rule 4-A-1 (i) on which the Employees rely provides:

"(Effective September 1, 1949), where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Before this Rule may be applied, it is necessary that it be established that the Carrier required work within the jurisdiction of these employees to be performed on the days in question.

The record does not satisfy us in this regard.

It is true that on occasions in the East St. Louis district, calls from outside points had been handled by the Terminal Company operators. These calls, (since stopped) however, were unauthorized and made in violation of Carrier's instructions to use the alternate facilities set up to handle such calls by the establishment of a direct line from Terre Haute to various locations in East St. Louis, an arrangement which did not involve the transfer of any telephone operator's work to others outside the scope of this agreement.

With respect to the handling of telephone calls from outlying points to the East St. Louis district, these calls, prior to September 1, 1949, were made by the employees at the East St. Louis exchange throughout the entire work week. The Terminal Company operators did nothing in connection with the handling of such calls. The only change that became effective September 1, 1949, was that on Saturdays, Sundays and holidays, the East St. Louis district could only be contacted at certain locations by calling on one of the three direct lines set up for that purpose. This did not involve any work by the Terminal Company operators. All that occurred was an elimination of telephone service with the maintenance of service by the installation of direct lines at three particular locations. Obviously, therefore, no work of the St. Louis operators has been transferred to the Terminal Company operators. As a consequence no violation of agreement has occurred.

The Employees further argue that when the East St. Louis telephone exchange is closed, it is possible for a switchboard operator in Carrier's Indianapolis exchange to call the operator at the Terminal Company exchange in St. Louis and have her connect the trunk line with a commercial telephone.

While it is possible for a call to be made in the manner suggested (and the Carrier concedes that on occasion such calls may have been made), it must be borne in mind that such calls, if made, were made contrary to specific instructions by the Carrier. The switchboard operator at Indianapolis who made the call in violation of Carrier's instructions, is also represented by the Brotherhood. It would be a simple enough matter for her to advise the sender of the call that in accordance with the Carrier's instructions she was unable to put the call through and in case of controversy, she would be fully supported by the Carrier since she would be acting in conformity with its directions. Indeed it would be most irregular, in the circumstances of this case, for us to hold the Carrier liable for acts of employees committed in **absolute violation** of its instructions.

We are not persuaded, on this record, that calls from outside points to St. Louis and East St. Louis are being handled by Terminal Company operators to any greater extent than they were handled by them prior to September 1, 1949.

It is true that in an attempt to furnish validity to its claim, the Employees presented a number of similarly worded affidavits made by employees of this

Carrier as well as by Terminal Company operators, all purporting to establish that there was no elimination of work on the days in question.

We cannot, however, accept these affidavits as conclusive on the disputed fact issue. They are entirely too general and indefinite to be of real value. They do not furnish specific dates, nor do they tell us when the purported telephone calls were made; nor do they indicate the specific locations to or from which the telephone connections were made—concededly an almost impossible task. But aside from the general objection mentioned, these affidavits are insufficient to sustain the claim. For example, each of the affidavits states that at St. Louis the Terminal Company operators handle many calls which are received from the Carrier's switchboard operators at Indianapolis. However, the only telephone connections for this Carrier handled by the Terminal Company operators for the Indianapolis exchange are those for the Rankin Yard. Such calls to the Yard can only be made through the Terminal exchange in St. Louis, and this is so even when the St. Louis exchange is open. It is the only way telephone connections from Indianapolis or any other outlying point can be made to Rankin Yard. This procedure was in effect even before the institution of the 40-hour week and may not be made the basis of complaint thereafter in the absence of a contractual provision applicable thereto. It thus may be that the affidavits refer to these permissible calls.

With respect to calls between Indianapolis and East St. Louis, the Carrier has shown that this district is serviced by two message lines (F 20 and F31) open 24 hours daily and which are in no way connected with the Terminal Company's switchboard. In addition there is commercial telephone service available. These facilities, the Carrier asserts, afford ample telephone service on Saturdays, Sundays and holidays between the Carrier's offices in the East St. Louis district and Indianapolis when its East St. Louis telephone exchange is closed and recourse to the services of the Terminal Telephone Exchange at St. Louis is neither necessary nor in fact authorized. There appears no necessity whatsoever for any of the affected offices to utilize the services of the Terminal Exchange in order to secure a connection to an outlying point on the days in question.

From the record in this case, it has not been shown that there is necessary work at the Carrier's East St. Louis telephone exchange on Saturdays, Sundays and holidays requiring the Carrier to have telephone operators on duty there.

The claim herein should be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 has not violated the contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.