

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware and Hudson Railroad, that:

1. Carrier violated the agreement between the parties hereto when commencing September 26 (Sunday), 1954, it assigned different hours of service to position of agent-telegrapher, Westport, New York, on Sundays, than on regular week days.
2. Carrier shall be required to compensate agent-telegrapher, Westport, New York, for 30 minutes at time and one-half pro rata rate for each and every Sunday commencing September 26, 1954 and continuing until such violation ended.
3. Carrier shall be required to permit joint check of its records to ascertain number of days on which agreement was violated.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective July 1, 1944. The collective bargaining agreement, as amended, is on file with this division and is by reference made a part hereof as though incorporated herein word for word.

This dispute was handled on the property in the usual manner and through the highest officer designated by Carrier to handle such disputes. The dispute failed of adjustment and since it involves interpretation of the collective bargaining agreement this division is under the Railway Labor Act, as amended, given jurisdiction to decide the dispute.

The dispute concerns the assignment by Carrier of different work hours on Sunday than on other days of the week at Westport, N. Y.

Prior to September 26, 1954, the assigned hours of agent-telegrapher position at Westport were 8:00 A. M., to 4:00 P. M. The work week of the

the case at issue. The Opinion of the Board in Award 6694 contains the following comment relative the Starting Time Rule:

“Rule 21 (a) prescribes a fixed starting time for regular assignments, which may not be changed without 36 hours’ notice. The Claimant’s five-day assignment has a fixed starting time, which indicates that the two hours on Saturday are not part of the regular assignment, as the notice did by the asterisk.”

In the instant case, the agent-telegrapher’s five-day assignment has a fixed starting time. The position of agent-telegrapher on Sunday was no part of a regular assignment.

There is no violation of Article No. 24 and carrier respectfully requests that claim be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of Agent-telegrapher at Westport, New York is a seven day position, and during all of the time, except for that covered by this claim the starting time had been the same on all seven days of the week.

On September 26, 1954, the Carrier made a change from 8:30 A. M. to 9:00 A. M. and extended the 8 hour day from 4:30 to 5 P. M.

Claimant was paid the time and a half rate for having to work his 8 hours, but seeks additional pay for the 30 minutes he had to work from 4:30 to 5 P. M. because that was outside of his working hours on his regular assignment which was from 8:30 A. M. to 4:30 P. M.

This situation continued to November 14 when the starting time on Sunday was put back to 8:30 A. M.

We had similar situations in Awards 6618 and 6808. Both awards remanded the cases involved for further consideration and negotiation on the property. We have not been advised what disposition was made of those cases, so they cannot be considered as precedents here.

Employees here concede that the Sunday work involved **was not part of any assignment.**

That being so, the Carrier did not violate Rule 24(a) which reads

“Regular assignments shall have a fixed starting time and a regular starting time shall not be changed without at least thirty six (36) hours’ notice to the employees affected.”

While the Carrier did give the notice required by this rule, no doubt as a precaution, that did not take claimant’s Sunday work out of his admission that it was not a part of any assignment.

Claimant apparently was aware of this, because here he is contending he is entitled to the 30 minutes pay under that part of Article 3½, Section 1, paragraph (m) which reads as follows:

“Time worked before or after the regular week day assignment shall be paid in accordance with overtime provisions of Article 3(c) or the call provisions of Article 3(d).”

But here again claimant is faced with his admission that his Sunday work was not a part of any assignment so that this rule is not applicable.

No violation of the agreement has been shown and claim must be denied. Award 8345.

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 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 25th day of June, 1959.