

Award No. 9575

Docket No. TE-7845

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul & Pacific Railroad, that:

(1) The Carrier violates the agreement between the parties when, beginning with the first Monday subsequent to September 1, 1949 and continuing each Monday thereafter, it requires the occupant of the agent's position at Plummer Junction, Idaho to perform the rest day relief service on the position of chief operator at that location; and

(2) For each day the violation is permitted to exist the Carrier shall compensate the occupant of the position of chief operator at Plummer Junction on the basis of eight (8) hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: An agreement is in effect between the parties to this dispute dated September 1, 1949, as to rules and wages. On page 38 of the wage scale, the following position is listed:

STATION	TITLE	HOURLY RATE
Plummer Junction "WJ"	Chief Operator	\$1.94

On page 78 of the wage scale, the following position is listed:

STATION	TITLE	HOURLY RATE
Plummer Junction	Agent	\$1.64

The assigned work-week of the occupant of the chief operator position is Tuesday through Monday, with working days Tuesday, Wednesday, Thursday, Friday and Saturday, and rest days Sunday and Monday. The chief operator is relieved on Sunday by the occupant of a regular rest day relief assignment, and is relieved on Monday by the occupant of the agent's position, the latter being required to assume the chief operator's duties in addition to those of his own assignment. The position of chief operator is a seven-day position.

The occupant of the agent's position has assigned work-week of Monday through Sunday, with working days of Monday, Tuesday, Wednesday, Thurs-

The Carrier maintains there is nothing in the Telegraphers' Agreement forbidding such an assignment. The work was not onerous on the days the agent protected the work of the two positions. In the absence of specific restrictions it is the prerogative of the Carrier to determine whether one rather than two employees were necessary on Monday to adequately and efficiently perform the work at Plummer Junction.

Under Rule 11 of the agreement, which contains the provisions of the National Forty-Hour Week agreement, the Carrier has the right under paragraph (a), to establish and maintain working assignments consisting of five days of work each week of eight hours each day, with two consecutive days off in each seven. This rule also gives the Carrier the right to stagger the work weeks of individual assignments in accordance with the Carrier's operational requirements. The Carrier, in making the assignments complained of in this dispute, has done so in full compliance with these provisions.

It is apparently the contention of the Telegraphers' Organization that Rule 11(e) of the agreement requires the Carrier to make individual relief assignments to specifically relieve each employee on his rest days. In other words, it is the contention of the Organization in this case that where the Carrier has established staggered assignments in seven-day service as it has at this station, it can do so only if the individual rest days of all employees concerned are filled by the assignment of specific rest day relief.

It is the position of the Carrier that it has the right to perform all necessary work through the device of staggering regular working assignments. The making of relief assignments is not a condition precedent to the staggering of working assignments. Under circumstances such as those which prevail at this station, where the Carrier can perform all necessary work through the device of staggered assignments, it may do so to the exclusion of any other method.

Basically it is the right of the management of the Carrier to determine the number of employees it will hire and assign, and to designate the work that they will perform. If the work required to be done is less on one day of the week than on another, the forces assigned to work may vary from day to day in accordance with the work load. These rights are fully secured under the 40-Hour Week rules and under prior rulings of this Board.

The only restrictions on these general rights of the Carrier are those which stem from the requirement that the employees involved must possess the right to perform the work in question; that is, they must have common seniority and either by agreement or practice must be qualified to perform the work in question. Such is the case here. The Agent and the Telegraph Operators are represented by the same organization, are subject to the same contract and have their seniority rights. All employees are fully qualified to perform the work of others and there is no violation of the working rights of these employees when the Agent, while he is on duty alone on Monday is required to do the work complained of.

The claim of the employees is without merit and should be denied.

OPINION OF BOARD: The claim is that the Carrier violated the Agreement when upon the installation of the 40-Hour Week on September 1, 1949, it required the agent at Plummer Junction to perform work usually done by the chief operator. At that time the work weeks were staggered so that assignments for the chief operators positions covered Tuesday through Sunday, leaving the work of that position to be performed by the agent on Monday.

The agent's positions at Plummer Junction was assigned only for the five days, Monday through Friday. The Employees assert that it is a five-day position, and that none of its work is done on Saturday or Sunday. On the other hand, the Carrier asserts that on those days the operators then on duty perform the items of necessary work ordinarily performed by the agent when on duty.

The Employees contend that although the work of the two positions is in the same building, it is in different departments, that the pay of the two positions is different, that their classifications and normal duties are in no manner related, that the agent has been required to perform service in "a position to which he is a complete stranger," and that "there is no authority anywhere in the agreement for such combinations."

The Carrier replies that there has always been considerable interchange of work between the positions, and that Rule 1, the Scope Rule, lists the covered positions without specifying their duties, including, "Agents," "Chief Operators and Asst. Chief Operator," "Telegrapher Operators," and "any combination of two or more of the above classifications."

The record indicates that normally the work of the various positions is as indicated by their titles; that the agent is in charge of the station and the chief operator is in charge of the relay office; that when on duty together the operators assist the agent in the work ordinarily done by him, including selling tickets, handling company mail and delivering train and switch lists to train crews, some of which is seven day work. The chief operator also tests and balances wire circuits. The Employees state that the agent is not experienced in technical work of wire circuits and on Mondays has sometimes needed technical assistance. They assert also that the work load at Plummer Junction is the same on Mondays as on other days; but the Carrier asserts that it is sufficiently light on Mondays that the necessary work can be easily and adequately performed by the one employee. The Employees do not deny the latter statement, but contend that under the Rules the Carrier must nevertheless fill each position separately.

As noted above, agents, chief operators and "any combination of two or more of the above classifications" are included in the Scope Rule, which includes no statement of duties nor differentiation for seniority purposes. Apparently, for the purposes of defining the employees covered, it merely adopted the types of employees as theretofore designated by the Carrier; but it expressly mentioned "any combination" of them. Thus if the Rules have been violated it is not merely because the work of different positions has been combined.

This claim is substantially the same as those in Awards 6946 and 9574 and requires the same disposition unless materially affected by special seniority provision. In Award 6946 this Division said:

"It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one. * * * Neither could two employees in the same craft holding positions in different seniority districts be staggered under this agreement; nor may two positions in different classes be staggered where common seniority between the classes does not exist. But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other."

The Employees contend that even if Award 6946 is correct, which they do not concede, the seniority rights of agents and chief operators are not the same, and that award 6946 does not here apply.

Rule 3 provides in part:

"Seniority rights date from the last time of entering the service and will accrue and extend over the districts herein specified.

* * * * *

District No. 23—Idaho Division, inclusive of 'WJ' Office, Plummer Jct."

Rule 4 provides in part:

"(a) Employees who held office seniority in a relay office on March 31, 1947, will continue to retain such office seniority.

Employees who enter relay service subsequently to March 31, 1947, will not acquire office seniority.

(b) Office seniority shall have preference over division seniority in the event of vacancy, change in assigned hours, new position created or when forces are reduced in a relay office."

Thus division seniority controls entirely, except that for the four purposes mentioned in Rule 4 (b), office seniority held on March 31, 1947 in any relay office controls there. It is assumed by the Employees but nowhere definitely stated, that the chief operator had such office seniority and that the agent did not. Agent Taylor was No. 2 on the seniority list of agents and operators in the Idaho Division for October, 1949, with seniority as of March 5, 1910; Chief Operator Tift was No. 25 on the same list, with seniority as of April 25, 1940. Thus both were in the service on March 31, 1947; but whether either of them then held office seniority in the relay "WJ" relay office at Plummer Junction and still held it on September 1, 1949 does not appear. The Employees' Ex Parte Submission states:

"The position of agent not being a party of the relay department is not, of course, subject to Rule 4, and the occupant of the position has no accumulated office seniority in 'WJ' office."

In their Reply to Carrier's Oral Submission they say:

"The occupant of the Chief Operator's position comes within the purview of this part of the rule. The Agent who is forced to perform rest day relief service on his position each Monday does not."

Obviously the agent did not acquire relay office seniority while working as an agent, and if he did not have office seniority in the relay office at Plummer Junction on March 31, 1947, or then had it but subsequently lost it, he did

not have it on September 1, 1949. Similarly, unless the chief operator had such office seniority there on March 31, 1947 and continued to hold it, he did not have it on September 1, 1949. But the parties neglected to show the Plummer Junction relay office seniority list or to give us any information about it. Fortunately the matter is not material, since we are not here concerned with any of the four circumstances under which office seniority prevails over district seniority, namely: (1) vacancy, (2) change in assigned hours, (3) new position created, and (4) reduction of forces.

In connection with the adoption of the 40-Hour Week the parties adopted a Memorandum of Agreement on September 1, 1949, providing that "where it may be necessary to combine positions in a Relay Office with positions on Road Divisions, in establishing rest day relief assignments," such "relief assignments in relay offices may be combined with rest day relief assignments on road divisions if there are less than five positions in a relay office assigned rest days," etc., and that division seniority shall govern such relief assignments. The Memorandum of Agreement does not specifically cover the situation here, but it indicates that there is no necessary incompatibility between relay office work and other work in the division.

The Employees contend further than in any event Award 6946 does not apply here because the agent's position is a five-day one, which under the authority of Awards 8286, 8531 and 8563, cannot be staggered with a seven-day position.

As noted above, the parties are not in agreement whether the agent's position is actually a five-day one, and it appears that some work ordinarily handled by him is performed also on Saturday and Sunday. It must also be noted that the question here is not whether work can be so staggered that one day's work of a five-day position can be performed by the holder of a seven-day position; it is whether one day's work of a seven-day position can be performed by the holder of a five-day position, which might involve different arguments.

In any event, as pointed out in Award 9574, the three awards cited are entitled to little if any weight as authority. Award 8286 did not relate at all to the question whether the work of a five-day position could be staggered with that of a six-day or seven-day assignment. Award 8531 made a flat statement, unsupported by any reason, rule or precedent. Award 8563 made the same statement, giving as sole authority Awards 8286 and 8531. Standing so unsupported, they do not sustain the claimed exception to the well-established authority of Award 6946. We therefore conclude that this claim is essentially the same as in Awards 6946 and 9574 and the many awards therein cited, and that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing hereon, 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 Employee 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.

DISSENT TO AWARD 9575, DOCKET TE-7845

For the reasons motivating my dissent to Award 9574, I consider Award 9575 to be erroneous. That dissent, by this reference is made applicable here.

Additionally, it must be noted that in this case there was no semblance of staggering anything except the integrity of the agreement. The agent occupied a five-day position wholly separate from the seven-day position of the Chief Operator. A regularly assigned relief employe relieved the Chief Operator on Sundays, one of his rest days, but on the second rest day, Monday, the agent was used. The Chief Operator never at any time relieved the agent. No relief is required for a five-day position. Under such factual circumstances it is impossible to set up a relief arrangement that could be termed "staggering".

Furthermore, this award jeopardizes the rights of all employes who secure special recognition of peculiar skills and abilities in the form of preferential seniority within a craft.

The Chief Operator held such preferential seniority, applicable only to the office where the work of his position is performed. The parties recognized that this special seniority fence between the relay office employes and those holding only road seniority prevented the relief of relay men by road men. They negotiated a special agreement permitting the establishment of relief positions the occupants of which were permitted to perform rest day work in both groups. But no provision was made for an agent, regularly assigned to a full-time "road" position, to relieve a "relay" man.

All awards, including 6946, the one relied upon by the majority here, frown upon such crossing of seniority lines for the purpose of affording rest day relief.

The holding of the majority to the effect that the matter of seniority is not material evidences a lack of understanding with respect to the purposes of establishing and providing for retention of special "office seniority". The purposes clearly include one to guarantee the holder preferential treatment concerning the work of a relay office. Employes have nothing to sell except their skill and time—the skill and time necessary to perform the Carrier's work. Any time such work is to be performed there is the subject matter of this special seniority to operate upon it.

The essence of seniority is the right it gives its holder to perform the work to which it pertains. To say that there was no vacancy in the Chief Operator's position on Mondays, in the sense conveyed by the parties' agreement, is simply to ignore the facts. Work of the position was required. There was no "regularly assigned relief employe". No extra employe was used, and so far as the record

shows none was available. A work requirement with no employe properly assignable on hand certainly results in a "vacancy". The rule required use of an employe who held office seniority in preference to one who did not.

The rules as a whole, as interpreted by practically all of our awards, plainly required use of the claimant, the regular employe, to perform the Monday rest day work of his assignment. The majority grievously erred when they failed to give effect to those rules.

J. W. Whitehouse
Labor Member.

**ANSWER TO LABOR MEMBER'S DISSENT TO AWARD NO. 9575,
DOCKET NO. TE-7845**

Award 9575 correctly holds, among other things, that division seniority is controlling in the situation here present and that Award 6946 correctly interprets the rules to permit staggering of positions in different classes in the same seniority district when employes are qualified to perform the work. Also see Carrier Members' Answer to Labor Member's Dissent to Award 9574.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen