

Award No. 9958

Docket No. TE-9077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers of the Norfolk Southern Railway that:

1. (a) Carrier violated Article V of the February 9, 1955 Agreement between the parties when it failed, within sixty days, to notify claimant A. R. Blow of the disallowance of his claim.

(b) Carrier be required to allow claim as presented by A. R. Blow for one day's pay (8 hours) on July 16-19-20-21-22-23-26-27-28-29 and 30, 1955.

2. (a) Carrier violates the Agreement between the parties when, commencing August 1, 1955, it requires the operator-clerk at Marsden, N. C. to perform the duties of Crew House Manager, for the P. D. Snipes Company, in addition to his regular work of operator-clerk for the Carrier.

(b) Carrier be required to pay the occupant of the second shift operator-clerk position at Marsden, N. C. (A. R. Blow or his successor), one day's pay for each day required to perform this outside work in addition to the pay received for his regular assignment commencing August 1, 1955 and thereafter until the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

On July 14, 1955, Carrier issued the following bulletin:

"Raleigh, N. C., July 14, 1955 gb
73-100

Bulletin No. 3563

ALL CONCERNED:

Effective immediately all room doors at Marsden crew house will be under lock and key. Keys to rooms can be obtained from the operators at Marsden station, who will assign rooms and make necessary

When you vacate room leave key with Operator and lock room after vacating. This will prevent unauthorized use of rooms by trespassers and will be for the protection of yourselves as well as the Company.

These changes are being made to improve conditions at the crew house and the full cooperation of all concerned is hereby solicited."

For the sake of clarification, the Crew House Manager referred to in the bulletin means the Commissary Manager for P. D. Snipes Company. Also, it is apparent the petitioners have misconstrued, either intentionally or unintentionally, that the crew house is under full operation by P. D. Snipes Company; this, as above stated, is not a fact. The Railway Company merely made an arrangement with Snipes Company to take care of the crew house and collect room rentals; the room rentals are remitted to the Railway periodically, for which collection service and nominal supervision, Snipes Company is allowed a small commission.

The work which it is alleged was placed upon these claimant operators in violation of the agreement consists entirely of work that is clerical in nature. The operators at Marsden are on an around-the-clock basis so that there is someone in the telegraph office during the entire twenty-four period. There is no great amount of this work at any one time, being spread out over the 24-hour period depending on the arrival and departure of crews from that point prior to or subsequent to their layover time there. Your Division has ruled many times that clerical work may be assigned to telegraphers to fill out their eight hour tour of duty. In fact, the right of the carrier to do so was most fully delineated in Award 615 by Referee Swacker, and this principle has been enunciated in subsequent awards.

In this connection, respondent respectfully cites Award 7093, with Referee Carter participating, wherein the telegraphers on the Kansas City Terminal Railway sought additional compensation because the duties of operating crossing signals were imposed on them. In that award it was stated—"We think it can be said that the scope rule reserves all telegraphers' work to telegraphers but it does not have the effect of ridding telegraphers of other work which might be assigned to them."—and as hereinabove stated, it has long been recognized that clerical work may be assigned to telegraphers to fill out their tour of duty, and respondent respectfully contends that is exactly what was done in the instant case.

IN CONCLUSION, Respondent respectfully asserts that the claim is without contractual basis; is premised on the erroneous assumption that the claimants are being required to perform work for the P. D. Snipes Company; that claimants are merely performing work which they can properly be required to perform for account of the Railway Company by whom they are employed.

Respondent, therefore, respectfully holds that the claim is without merit, is founded on a fallacious assumption; and urges that your Board deny same.

All of the data contained herein has been discussed with the petitioners, either in conference or by correspondence, and/or is known and available to them.

OPINION OF BOARD: The Division finds that the Carrier did not disallow the claim specified in 1(b) within the time limitation prescribed by Sec-

tion 1(a) of Article V of the Agreement of August 21, 1954. Therefore, Claim 1(a) and (b) will be sustained.

During the course of appeal the General Chairman expanded the claim to include future dates on a continuing basis. The Carrier contends that such enlarged claim cannot properly be considered by the Division because it was not handled on the property in the usual manner. The record is not sufficiently clear to arrive at a proper determination of Claim 2, and this position of the claim will, therefore, be dismissed without prejudice to the position of either party.

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

That the parties waived oral hearing;

That the Carrier and the Employee 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 claim will be disposed of in accordance with the Opinion.

AWARD

Claim 1(a) and (b) sustained; claim 2(a) and (b) dismissed; all in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.