

Award No. 11045

Docket No. TE-10140

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chesapeake and Ohio Railway (Chesapeake District) that:

1. Carrier violated the agreement between the parties when, on February 26 and 27, 1957, it required the Agent at Fostoria, Ohio to perform service elsewhere and did not fill the vacancy with an available extra employe.

2. Carrier shall compensate Extra Agent-Operator J. W. Kinder who was idle, qualified, and available in the amount of two days' pay at the rate of the position.

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

Fostoria, Ohio is located on the Hocking Division of this Carrier's lines. The position covered by the agreement with which we are primarily concerned is that of Agent-Operator with assigned hours 9:30 A. M. to 5:30 P. M. seven days per week and assigned rest days of Saturdays and Sundays each week filled by a regular relief operator. The remainder of the station force at Fostoria consists of a Cashier 8:00 A. M. to 5:00 P. M., a clerk 8:30 A. M. to 5:30 P. M. (These two positions are not under the Telegraphers' Agreement). Also, a position of operator (covered by the agreement) with assigned hours outside of the Agent-Operator's tour of duty. We are not here concerned with the night operator position.

By direction of the Carrier, the regularly assigned occupants of the Agent-Operator, Cashier and Clerk positions attended a Better Service Conference at White Sulphur Springs, West Virginia on February 26 and 27. The Carrier filled the vacancies on the Cashier and Clerk positions with extra clerks or some employes from the Clerks' seniority roster but did not fill the vacancy on the Agent-Operator position with an employe from the Telegraphers' seniority roster even though extra operators were idle and available. The work of the Agent-Operator on two days was performed by the relief clerks. The relief clerk occupying the

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: T. A. Williams was Agent-Operator at Fostoria, Ohio. He and five other employes from that station attended the annual meeting of the Better Service Conference held in White Sulphur Springs, Virginia, on February 26 and 27, 1957. Although attendance was by invitation and voluntary, the Carrier compensated six employes for the two days at their respective rates of pay.

During their absence, Carrier filled the positions of the five employes with substitutes, but did not fill the position of Agent-Operator, T. A. Williams. Claimant, who was the senior, qualified, available extra Agent-Operator, filed a claim contending that he should have been used to fill the position of Agent-Operator during Williams' absence.

The sole question is whether work of the Agent-Operator was performed on the two days during which T. A. Williams was absent. The Carrier contends that the work of Agent-Operator, Williams was deferred. Although Carrier had the right to blank the position, it was not blanked because Williams received his pay for the two days in question. Briefly, Carrier's position is that "even if it can be said that the position was blanked, his (Williams') work was either deferred until his return or was left unperformed."

The Organization argues that some of the Agent-Operator's work was performed by the clerks and that the position of Agent-Operator is a seven-day position which is normally filled every day of the week.

The record is lacking in any clear cut evidence on this issue. It is agreed that the clerks signed C-1 reports and bills of lading. This work, the Carrier agrees, could not be deferred. But it argues that "clerks do such work while the agent-operator is on duty. When shippers bring in bills of lading while the agent-operator is on duty, the clerk regularly signs such bills of lading in the name of the agent, just as clerks do at other stations." Continuing, the Carrier states in the record:

"Clerks do the rating, routing, and billing of such freight shipments, and have done such as a part of their regular assignment since the station has been in operation with its present force. The Agent-Operator, when present, may supervise the handling of such work, but it is clear that the clerks did their regular work without supervision on the two days Williams was absent."

In declining the claim, the Assistant Vice-President - Labor Relations wrote to the Organization's General Chairman under date of April 22, 1957, in part as follows:

"T. A. Williams is regularly assigned as agent-operator at Fostoria, Ohio, 9:30 A.M. to 5:30 P.M. relief days Saturday and Sunday, a 7-day position. Agent-Operator Williams, together with two clerical employes at Fostoria, attended Better Service Conference at White Sulphur Springs on February 26 and 27. No one

worked on the agent operator position on these two days and the work was deferred. Agent-Operator Williams was paid for both February 26 and 27."

The fact that Williams was paid for the two days is irrelevant. Was the work of the Agent-Operator actually deferred on the two days?

There is no clear definition or description in the Agreement or in the Record of the duties of an Agent-Operator. It is admitted that he is the Carrier's representative at the station and that he is primarily responsible to the Carrier. It is further admitted that the clerks sign his name to bills of lading. This authority comes from the Agent-Operator. While he may also sign bills of lading and do other clerical work, the Agent-Operator primarily supervises the clerks at the station and acts for and on behalf of the Carrier in all transactions within the scope of his and the clerks' duties.

From the entire Record, we are compelled to conclude that some, if not all, of the duties of the Agent-Operator were performed at the Fostoria station on February 26 and 27, 1957. The clerks did not sign their names to the bills of lading, but Mr. Williams' name, who was not present and could not exercise supervision as to the correctness of these transactions. If the Carrier has the right to defer the work of a supervisory employe for any reason whatsoever, why have one? Obviously, the Agent-Operator is there to see that all of the work which needs to be done is done and that it is performed in the manner prescribed by the Carrier.

In Award 4482 (Robertson) we said:

"It is a justifiable and reasonable conclusion that if the Agent were off duty for a day, and certainly all the more so if for a period in excess of a day, that the task of supervising these employes derived upon some one. If the Cashier took the lead, as indicated by Carrier, it is fair to assume that he exercised that supervision to some extent. Performing some lead work while the Agent is absent from the station for a half-hour or an hour during his regularly assigned hours is much different than undertaking such responsibilities for a day or three days at a time."

While the record in this case does not show who took the lead in the absence of Agent-Operator, Williams, it is reasonable to assume that the task of supervising the employes at the station derived upon some one.

Award 5528 (Whiting) cited by the Carrier is not applicable. The agent-operator was the sole employe at the stations involved. No one replaced him. He had no one to supervise. We properly held that the Scope Rule was not violated and that the Carrier had the right to blank the position.

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 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 violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.