

Award No. 11723
Docket No. TE-10142

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad that:

1. Carrier violates and continues to violate the agreement between the parties when it assigns the work of the Agent-Operator at Holt, Alabama, and of the Agent-Operator at Woodward, Alabama, to employes not covered by the agreement on their rest days.

2. Carrier shall compensate J. A. Stallworth, regularly assigned Agent-Operator at Holt, Alabama, or his successor, for a call on each Saturday and Sunday the violation occurs; and, compensate C. Whidby, regularly assigned Agent-Operator at Woodward, Alabama, or his successor, for a call on each Sunday the violation occurs; commencing November 27, 1956 and continuous thereafter until the violations are corrected.

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

Holt, Alabama and Woodward, Alabama are stations on the Carrier's Birmingham Mineral Subdivision. Each station has one position covered by the Telegraphers' Agreement.

At Holt, the position of agent-operator is a five-day week position with assigned rest days of Saturday and Sunday, not relieved on rest days. The remainder of the station force is two clerks, under another agreement, whose positions are also five-day positions with Saturday and Sunday rest days, not relieved. The station is under the supervision of the agent-operator. The work performed at this station is the usual agency work, handling of inbound and outbound freight, both car load and l.c.l., issuing bills of lading and way billing the outbound freight and expensing the way bills on inbound freight and effecting delivery, accounting, making reports etc.; in addition, there is a certain amount of communication work transmitting and receiving

raphers' agreement is not being violated. Furthermore, as the practice was in effect for several years prior to adoption of the above quoted understanding, under the clear and unambiguous wording of the understanding the practice of calling clerks to do the work should not be disturbed.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agent-Operator at Holt, Alabama has Saturday and Sunday as rest days. The Agent-Operator at Woodward, Alabama had Sunday and Monday as rest days. The claim is that work belonging to the position of Agent-Operator was on their rest days assigned to clerks.

The rules or parts thereof involved here are as follows:

"RULE 1

"Scope

"The following rules and rates of pay shall apply to all wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, operator-clerks, tower-men, levermen, tower and train directors, block operators, operators of mechanical telegraph machines, staffmen, and such freight and ticket agents and other positions as listed herein."

"8(n) Work on Unassigned Days —

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty hours of work that week; in all other cases by the regular employe."

The point is disputed but the record establishes that the work in question would have been performed by the Agent-Operators if it had occurred on their workdays. They handled all communication work and performed clerical work on their regular workdays.

The work assigned to the clerks involved both communications and clerical work.

Under the Rule 8(n) the Carrier must assign any work embraced by the position either to an available extra or unassigned employe who will not otherwise have forty hours of work that week, or to the regular employe. No other alternative is available to the Carrier. In the instant case Carrier required an employe outside the Agreement to perform the work covered by the scope thereof and which belonged to the position of "agent-telegrapher." Carrier thereby violated the rule. Award 10575 (LaBelle), 4320 (Robertson), 6693 (Leiserson).

The Brotherhood of Railway Clerks have had notice of the pendency of these proceedings and declined to appear. That matter is not now an issue here.

The Carrier's contention that the practice of assigning the work to Clerks on Agent-Operators rest days was of long standing and amounted to an accepted practice, is not sustained by the evidence. There is no evidence that it was a prevailing system-wide practice and uniform throughout the system. Isolated instances cannot change the terms of the Agreement.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.