Award No. 11860
Docket No. TE-10135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the terms of the Telegraphers' Agreement when on the 24th day of December, 1956, it required Operator G. R. Phillips to suspend work during regular hours on his regularly assigned position at Delta, South Carolina.

2. Carrier shall compensate Claimant G. R. Phillips in the sum of $14.66, representing eight (8) hours' pay, December 24, 1956, for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: There are, in force full and effect, collective agreements entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreements are on file with this Division, National Railroad Adjustment Board, and are, by reference, made a part of this submission as though set out herein word for word.

The dispute was handled on the property through the highest officer designated by the Management to handle such disputes and failed of adjustment. The claim is predicated on the provisions of the collectively bargained agreements.

1. On September 9, 1954, position of Operator, Delta, South Carolina, was established.

2. On September 20, 1954, G. R. Phillips, claimant, became the owner of the assignment, as provided by collective bargaining agreement.

3. The assigned hours of service (on dates involved) were 7 P. M. to 4 A. M., with one hour for lunch.

4. The assigned work week was:
   Work days — Monday through Friday
   Rest days — Saturday and Sunday

In conclusion the Carrier desires to emphasize that:

1. The schedule agreement here being construed does not carry the sought for guarantee rule,

2. The 40-Hour Week Agreement as indicated by Section 3(f) did not create such a guarantee,

3. Employes' proposal of November 18, 1952 did not secure such a guarantee, and

4. This Board is without authority to create such a rule in the guise of interpretation.

Carrier affirmatively states that all data used herein have been discussed with or is well known by the General Chairman of the petitioning organization.

OPINION OF BOARD: Claimant Operator G. R. Phillips was regularly assigned to a five-day position of telegraph operator from December 1, 1956 through December 28, 1956 when the position was abolished. On December 20, 1956, Claimant was advised by the Chief Dispatcher that the operator's position at Delta (where he was assigned) would be annulled for one day only, December 24, 1956. This assignment was also blanked on the holiday, December 25, 1956, for which the Claimant was allowed a minimum day. Because of a decline in business this position was abolished on December 28, 1956.

The Carrier takes the position that the issue in the instant case is whether, in the absence of a guarantee rule, the Carrier is estopped from blanking or annulling an unneeded telegrapher's position. The Organization takes the position that Rule 9 of the parties' Agreement has been violated and therefore that the Claimant is entitled to receive one day's pay for December 24, 1956. Rule 9 states:

> "Employes will not be required to suspend work during regular hours or to absorb overtime."

The Organization contends that the Claimant had an assigned work week beginning Monday and ending the following Sunday. In other words the Brotherhood states that since Claimant was assigned to work on Monday, December 24, 1956, he was entitled to remain undisturbed in his regularly assigned position from Monday, December 24, 1956, through Friday, December 28, 1956 with time off for Tuesday, Christmas Day which is a recognized holiday. In order to qualify for holiday pay the agreement required that compensation be credited to the work day before and the work day after the holiday. When the matter first came up on the property, pay having been denied for December 24, 1956, Claimant was not paid for the Christmas holiday. Subsequently the Carrier reversed itself and did allow such holiday pay and the Claimant was treated as having worked on December 24, 1956, for the purpose of qualifying him for the holiday pay.

It is difficult to see how the Carrier could thus take the inconsistent position that while it would recognize that he worked on December 24, 1956, in order to qualify him for holiday pay, the job was blanked on that day, he did not really work on this day and he would not be paid for said day. If the Carrier regarded that he did work on that day then obviously it could not take the position that the job was blanked on that day and he would not

be paid for it. This does not bring into play the authority of the Carrier to blank, or annul jobs. The fact of the matter is that Claimant's job was not blanked on December 24. When the Carrier saw fit to abolish this position, December 28, 1956, no claim was filed by the Organization protesting this action.

On the basis of the record before this Board, Claimant was required to suspend work during regular hours as a consequence of which the Carrier did violate Rule 9.

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 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 its Agreement.

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 November 1963.

CARRIER MEMBERS' DISSENT TO AWARD NO. 11860,
DOCKET NO. TE-10135

It is axiomatic that the Carrier's right to manage is restricted only to the extent that it is limited by law or by Agreement provision. The Agreement here involved contains no guarantee of any specified number of hours or days of work per week, and in the absence of such guarantee rule there was no prohibition against the Carrier annulling the assignment of the Claimant on Monday, December 24, 1956.

Rule 9 is not a weekly guarantee rule. It does not fix a basic work week (Awards 5097, 10755).

The fact that the Claimant was erroneously allowed pay for the holiday, December 25, 1956, has no bearing upon the Carrier's right to annul the position on any day in the absence of a weekly guarantee rule.

The Award is erroneous and we dissent.

P. C. Carter

D. S. Dugan

W. H. Castle

T. F. Strunck

G. C. White

ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11860, DOCKET NO. TE-10135

As is quite often the case, the dissent is entirely beside the point.

The question in dispute was the meaning of Rule 9 under circumstances where there was no absorption of overtime. The Carrier contended that the rule has no application to such a situation. The Employes contended that the Carrier's position ignored the significance of the disjunctive "or".

The Referee quite properly found that the rule was violated as contended by the Employes, and it makes no difference that he gave what might be considered undue prominence to the fact that Carrier paid the claimant the holiday pay involved.

Furthermore, the record has been searched in vain for any indication that the Carrier considered the holiday payment to be "erroneous" as it is characterized by the dissenters. The payment was allowed in a forthright statement by a Carrier officer during handling on the property and was never mentioned again by the Carrier.

The Award is not erroneous, but is a correct application of Rule 9 as it is written.

J. W. WHITEHOUSE
Labor Member