

Award No. 12147
Docket No. TE-10354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BESSEMER AND LAKE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bessemer and Lake Erie Railroad that:

1. The Carrier violated the terms of the agreement between the parties when beginning on Saturday, May 8, 1954, it abolished the relief position at Annandale, Pennsylvania, and transferred the work of receiving and transmitting mine reports formerly handled by the relief operator on the Saturday rest days of the position to employees not covered by the agreement at Branchton, Pennsylvania.

2. Carrier shall be required to pay eight hours at straight time rate to either the relief operator that was displaced or the senior idle extra employe, or in the event that neither the relief operator nor senior idle extra employe was available, then the carrier shall compensate W. R. Renick, Agent at Annandale, for eight hours at the time and one-half rate beginning on Saturday, October 13, 1956, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties effective February 1, 1948, which by this reference is made a part of this submission.

Annandale, Pennsylvania, is a one-man station located on the Hilliards Branch, 6.3 miles east of Branchton, Pennsylvania, which is located 94.9 miles south of Erie, Pennsylvania. The one-man station at Annandale is operated by an agent listed under Rule 37 of the Agreement. A relief agent relieved the regularly assigned agent on Saturdays until April 30, 1954, when the following message was directed to W. R. Renick at Annandale:

"Form 389 G.E.

BESSEMER AND LAKE ERIE RAILROAD COMPANY
INTRA-COMPANY CORRESPONDENCE

From S P Detweiler SA	Date April 30th, 1954
To W R Renick A Annandale Pa	Reply Requested
A C Cypher A Annandale Pa	In Reply Refer to File
Copy to WLM GS WJW CTD	

be sustained. But the failure of the parties to deal directly with these practices in subsequent agreements and their recognition by the parties for more than fifteen years after the negotiation of the last collective agreement furnishes convincing proof that their abrogation was never intended. See Award 1435. The conduct of the parties to a contract is often just as expressive of intention as the written word, and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made.

We conclude therefore that the specified practices are not superseded by subsequent agreements and that they remain in force until such time as they may be eliminated by negotiation, a field entirely foreign to the powers of this Board."

The management holds, without prejudice to its position that the claim should be denied in this case, that the employees' claim for eight (8) hours' straight time rate to either the relief operator that was displaced or the senior idle extra employee, is not correct and that any allowance to an agent for performing work on rest days, is on the basis of a minimum allowance of three hours at time and one-half rate for each time required to report. Also that the employees' claim that in the event that neither the relief operator nor senior idle extra employee was available, that the company shall compensate W. R. Renick, Agent at Annandale, for eight (8) hours at the time and one-half rate is also not correct, as it is contrary to the well-established principle consistently recognized and adhered to by the Third Division, National Railroad Adjustment Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an agreement and claim should be at straight time rate. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967, and others.

In summary, the carrier holds that it is not required to have an agent on duty at Annandale each Saturday for two (2) or four (4) minutes' work even if such work was work that is the exclusive work of the agent. However, the management has by practice and agreements definitely established that this work may be performed by other than agents. It is an established fact that the work at Annandale, not only on Saturdays, but on other days of the week, has decreased to the point where the assignment of an agent five (5) days per week is not justified. The carrier, therefore, respectfully requests the Third Division, National Railroad Adjustment Board, to deny the claim in this case for the reasons cited in this Ex Parte Submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim stems from the discontinuance of Saturday operation at Annandale, Pennsylvania, a one-man branch line station, and the transfer of work to employees at Branchton, Pennsylvania. At Annandale, the agent performed all the work during the weekdays; on Saturdays, his rest day, a relief agent replaced him for the work. Effective May 8, 1954, the agency at Annandale was closed on Saturdays, and the work was assigned to Branchton, where the agent is not on duty on Saturdays. Claim is made that Carrier violated the rules of the Agreement by assigning work of the agent to a clerk who is outside the Scope of the Agreement, and request is made for compensation as specified in the claim.

Organization contends that relaying of mine reports other than through the agent at Annandale is a violation of the Scope Rule. It argues that the

work that is performed exclusively by the agent at the one-man station at Annandale cannot be transferred on Saturdays to the clerk at Branchton, who is outside the Scope of the Agreement. It takes the position that when the rest day relief position was discontinued, Saturdays became an unassigned day at Annandale; and the work rightfully belongs to an extra employe or the regular incumbent in accordance with Rule 2(a), Paragraph K, which treats with work on an unassigned day.

Carrier denies the claim on the grounds that the Scope Rule is general and does not reserve a specific item of work to a particular employe. It maintains that shippers may telephone their requisitions for cars to other agencies, as Branchton, and that the clerk at that agency may handle the orders without violating the Agreement. It also asserts that since the Scope Rule does not grant agents the exclusive right to perform this work, Organization must prove its claim through custom, tradition, and practice. This it has failed to do. It further contends that the issue does not concern mine reports, but the question of whether a clerk may receive telephone requisitions for cars from a shipper.

We note that although the claim is for work involving mine reports from October 13, 1956, this type of work was discontinued on Saturdays effective June 1, 1956. We, therefore, conclude that the issue does not concern mine reports. In the conference on the property between the parties, when Carrier pointed out that mine reports were discontinued in June, the representative of Organization did not deny this fact, but took the position that regardless of whether or not mine reports are prepared and transferred, the Agreement was violated because the information telephoned by shippers to the clerk at Branchton is used by the company. The work in dispute, we find, is receiving telephone requisitions for cars from shippers; and the question to be answered is whether the clerk at Branchton had the right to take these messages.

The Scope Rule, which is general in nature, lists positions but does not describe the specific duties of each class of employes. We do not find the work in dispute exclusively reserved to the agent under the Scope. Claimant has failed to present competent evidence that by tradition, historical practice and custom, this work belongs exclusively to the agent. On the contrary, we find that it is an established practice for clerks at any agency to receive telephone requisitions for cars from shippers. Thus, this work is interchangeable between clerks and agents.

Organization relies on the argument that this work belongs to the agent at Annandale because he performed the duties exclusively. We recognize that he did so because he functioned in a one-man station, but we do not find that this circumstance confers upon him a grant of exclusive right to the work. Carrier's action in abolishing the position of Saturday relief agent because of declining business and the transferring of the remaining duties which required about four minutes' time was reasonable, for this was interchangeable work between clerks and agents, and readily manageable by the clerk on duty. To accept Organization's reasoning would virtually enforce Carrier to continue to maintain a one-man station operation on a relief day, even though it is the practice of clerks and agents to handle this work interchangeably at other agencies staffed by an agent and/or clerks. This position is untenable where there is no proof of violation of any rule of the Agreement.

Moreover, the claim as specified, if upheld, would, in effect, require Carrier to pay for eight-hour service in behalf of the relief operator where it is apparent that the time necessary is less than 10 minutes. At most, if the claim

had merit, the Petitioner would be entitled to compensation under the call rule. We hold, however, that the Agreement was not violated; and the request for compensation is denied.

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 Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1964.