

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago & Illinois Midland Railway that:

1. The Carrier violated the parties' agreement at Oakdale, Illinois when on July 6, 7, 8, 9, and 10, 1959, it suspended W. R. Wallace, Jr., from his work at Oakford, Illinois, and required him to travel to Kilbourne, Illinois, a closed agency station, and there to perform agency work which he would have otherwise had to perform on an overtime basis.

2. The Carrier shall, because of the violation set out above, compensate W. R. Wallace, Jr., at the overtime rate (a minimum of three (3) hours for two (2) hours' work or less) on each date set out in Item 1 above in accordance with applicable rules.

EMPLOYES' STATEMENT OF FACTS: There is an agreement by and between the parties to this dispute, effective November 1, 1946, revised and reprinted December 1, 1951, to include all appendices and supplements to-date, and as otherwise amended.

At Page 44 of said agreement under the caption Appendix No. 1 are shown the positions involved in this dispute:

"Appendix No. 1
Agent-Telegraphers

* * * * *
* * * * *

Athens, Oakford, Kilbourne, Topeka, Forest City.....\$1.55

On April 18, 1958, Chicago & Illinois Midland Railway Company and Railway Express Agency, Inc., filed with the Illinois Commerce Commission a joint petition asking authority to abandon the railroad agency and express agency and to abandon the depot or station buildings for use as a railroad agency and express agency at Kilbourne, Illinois.

claim indicates a lack of confidence on the part of the Organization in the merits of the claim."

CONCLUSION

Claimant Wallace has failed to demonstrate that he was suspended from work during his regularly assigned hours or that he was called to perform work outside of those hours. Therefore, a denial is respectfully requested.

OPINION OF BOARD: In 1958 the Carrier sought and was granted permission by the Illinois Commerce Commission to discontinue the agency at Kilbourne, Illinois. The Carrier sought the Employees approval for a proposal to have the Agent-Telegrapher at Oakford spend four hours per day at the Kilbourne station, but this request was denied. It posted a bulletin notice on August 26, 1958 informing of the Kilbourne closing and that Oakford would handle waybills for it.

Sometime thereafter the Carrier instructed the Agent-Telegrapher at Oakford, Claimant Wallace, Jr., to travel to Kilbourne during his regular 8 hour stint to perform certain tasks which had formerly been performed by the local agent-telegrapher. These tasks consisted of: 1) checking the yard, 2) making up switch lists, indicating thereon cars to be moved, 3) leaving these lists together with waybills in the south telephone booth at Kilbourne. Wallace did the foregoing on July 6, 7, 8, 9, and 10, 1959 and filed a claim for three hours overtime call for each date on the theory that this was a suspension of work to absorb overtime in violation of Article 6 (B) of the parties' Agreement.

The Employees contend that the assignment of Wallace to tasks at Kilbourne during his regular tour of duty was improper under Article 6 (B) and that they should have been performed on an overtime basis. Article 1, 3, 5, 6, 12, 20, and 22 all deal with individual positions at a single location and require that the basic day of work be performed at that location, and preclude dividing the work day between two locations.

The Carrier argues that Wallace has been fully compensated for services performed on the dates in dispute and that his work on those dates was not performed in violation of any Agreement provision. It notes that performance of tasks at two locations was a proper assignment and has long been a normal procedure for many agents including his predecessor without protest, that Wallace knew of this requirement when he began work at Oakford, and that he performed these tasks within his eight hour day with proper compensation. It contends that Wallace was not required to suspend his work at Oakford to do the work at Kilbourne, that therefore Article 6 (B) has not been violated, and that the claim must be denied.

The central issue in this case is the right of the Carrier to assign an employe stationed at one location to go for a few hours to another location to do similar work and return to his original location within the employe's 8 hour shift without being held in violation of the rule against absorbing overtime.

The facts are clear in this case that the Carrier properly sought and obtained discontinuance of the Kilbourne agency; that it sought unsuccessfully the Organization's agreement to a dualized coverage of Kilbourne by the Oakford based Agent-Telegrapher; that it posted a bulletin notice informing that Oakford would be the location for handling Kilbourne way-bills "unless otherwise instructed"; and that is assigned the Agent-Telegrapher Wallace (as well as his predecessor) to handle work at Kilbourne on occasion as part of his work at Oakford.

This Board has ruled consistently that a Carrier has the right to abolish a position at a location where work demands have appreciably diminished (11294). It has also taken the position that a Carrier has the right to require the incumbent of a position to work at two locations even though the original bulletin of the position specified work in only one location.

As noted by Referee Daugherty in Award 8428:

"The general answer, given in a number of awards in which we concur, is that nothing in the Agreement prohibits same, particularly if the starting and ending location is the same and if the work in both locations is similar (in the same group) and in the same seniority district."

This language was endorsed with approval by Referee Dolnick in Award 12332 wherein he added:

"Although the Awards of this Division are not unanimous, the later and better considered, uphold this principle. See representative Awards 11660, 11594, 10950 and 8428."

The question of whether the assignment of work at two locations constituted an absorption of overtime must be answered in the negative. The Claimant was not required to abstain from work during his regular 8 hour stint so that he might work new hours during what would normally be his overtime hours, nor was he required to reduce his hours so as to be available for later straight time assignment. What he was required to do was handle his usual duties, in the same fashion as had other Agent Telegraphers at Oakford, both at his location of starting and stopping work and at a neighboring station which had been properly abolished with its coverage transferred to his main location. He did this during his regularly assigned hours. This was a normal function of his assignment, and did not require any performance on overtime or at overtime rates. This Board has held that the Carrier has the right to make such work at two locations a part of an employees regular assignment (10950).

In view of the foregoing, we conclude that Claimant was fulfilling his proper assignment, within his normal eight hours and in doing so was not required to absorb overtime. He received proper compensation for these tasks. The claim is therefore denied.

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 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 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 13th day of January 1965.