

Award No. 13313

Docket No. TE-12420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. Carrier violated the Agreement between the parties when on July 4, 1959 it did not fill the position of first trick telegrapher-clerk at Fair Ground, Iowa and required or permitted an employe not covered by the Agreement to perform work accruing to the position.

2. Carrier shall compensate L. S. Hickie, first trick telegrapher-clerk, Fair Ground, in the amount of eight hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Agreement, effective June 1, 1948 and other supplementary agreements between the parties, are available to your Board and by this reference are made a part hereof.

Fair Ground, Iowa is a station on the Eastern Division, Chicago District, of this Carrier's lines, 71.6 miles east of Oelwein, Iowa, the western terminus of the district, and 174.2 miles west of Chicago, the eastern terminus. Addendum No. 1 of the Agreement lists two telegrapher-clerk positions at Fair Ground. The first trick has assigned hours of 5:00 A. M. to 1:00 P. M. daily, and the second trick 4:00 P. M. to Midnight daily. The Carrier shows in its time table that the first trick is open except on holidays.

On July 4, 1959, a holiday, the Carrier chose not to fill the first trick at Fair Ground and used the Illinois Central telegrapher at East Cabin, Illinois (3.3 miles east of Fair Ground) to handle train order No. 28 addressed to Train No. 91. This train order was completed to Operator Kraft at 9:28 A. M. and reads as follows:

"No. 192 has arrived at Fair Ground. Signed H.J.K. Dispatcher"

Eastern Division Timetable No. 10 was in effect on the date of this claim. We now show the stations as listed in this time table from Stockton, Illinois to Fair Ground, Iowa with the distance in miles between each station.

Stockton
0.4

[289]

Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Instant Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

Carrier has established that there has been no violation of the applicable Agreement, and that claimant is not entitled to compensation claimed.

Therefore, Carrier respectfully requests that this Board deny the claim of the Employees in this matter.

OPINION OF BOARD: In this claim the Carrier blanked the position of First Trick Telegrapher-Clerk, Fair Ground, on the holiday, July 4, 1959. Fair Ground is on this Carrier's property and is located 3.3 miles west of the station at East Cabin, which is located on a segment of joint trackage over which the Illinois Central, C.B. & Q. and this Carrier operate.

On the date in question, westbound train 91 met eastbound train 192 between Portage and East Cabin on double track. A train order was delivered to train 91 at East Cabin advising that train 192 had arrived at Fair Ground.

Claimant, who is assigned at Fair Ground, alleges that the train order should have been handled at Fair Ground, and that he should have been called upon to perform the work. He cites Rule 8, Section 1(m) and Decision No. 2 of the 40-Hour Week Committee, to support his position.

The Carrier argues that under the terms of the joint agreement, the I. C. operates the joint tracks, and has control over the joint employees. They urge that this also extends to the issuance of train orders to trains operating on the tracks.

The initial question to be answered is whether or not the work performed at East Cabin should have been performed at Fair Ground. In other words, is it true that, but for the holiday, the work would have been performed at Fair Ground?

If this question is answered in the affirmative, we would then proceed to consider the application of the rules cited by the Organization in regard to work performed on a holiday.

The employees have not proven in this record that the work involved should

have been performed at Fair Ground, or in fact, that it ordinarily would have been so performed. We are of the opinion that Carrier's use of the joint employe for the delivery of the train order in question, was proper under the joint operating procedure common to the railroad industry. We find no violation of the instant Agreement.

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 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 25th day of February, 1965.