

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated the Agreement between the parties when, by its Bulletin No. 40, to become effective June 1, 1960, it declared the position of agent-operator at Carthage, Tennessee abolished without any intent of discontinuing the position or work thereof, and concurrently therewith readvertised the very same position for assignment.

2. Carrier further violated said Agreement when it unilaterally changed the method of pay attached to said position from monthly basis to hourly basis for the sole purpose of reducing the compensation legally and duly applicable to said position.

3. Carrier shall restore the monthly compensation to the agent-operator position at Carthage, Tennessee as it existed prior to June 1, 1960, and pay the occupant thereof for difference due on a day-to-day basis.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, bearing effective date of May 1, 1924, its changes and supplements, are available to your Board, and by this reference are made a part hereof as though set out herein word for word.

There is one position covered by the Agreement at Carthage, Tennessee. This position is classified as agent-operator, with rate of pay, effective as of May 1, 1960, of \$490.66 per month. See positions listed and agreed to in the so-called wage scale, which is a part of the Agreement.

On May 18, 1960, the Carrier's General Superintendent-Chief Engineer issued Bulletin No. 40, which declared abolished the position of agent-operator at Carthage and established a new position of agent-operator at Carthage

And it is also here added that the operation of the station at Carthage was changed from seven to a six day basis effective September 1, 1949 without benefit of rule specifically authorizing it and without complaint of Employees by reason of practice going back to the beginning of the railroad as presently constituted in 1902, whereas the change in the station to a five day basis is supported not only by the said practice, but also by specific agreed-upon rules of the 40-hour week agreement.

Employees further allege violation of Guarantee Rule 10, but as this rule runs to employees rather than positions or assignments, and in revision thereof to conform to the 40-hour week rules the former exception of "holidays" was extended to include "rest days and holidays", it could have no application to the employee at Carthage with Saturday and Sunday as his assigned rest days, and no requirement upon him to work on such rest days and holidays except at the rate of time and one-half under the overtime rule of the 40-hour work week rules.

Employees also allege violation of Rule 17(e), the usual rule prescribing the manner of advertising new positions or vacancies, but that it was followed in every particular is self-evident by the issuance of Bulletins Nos. 40 and 43 by the General Superintendent-Chief Engineer (Carrier's Exhibits Nos. 1 and 2).

Carrier respectfully submits that when the position of Agent-Operator at Carthage became a Five-Day Position, under the preface "Note" of the 40-hour week agreement and Article II, Section 1(b) thereof, it was well within its rights to concomitantly change the assignment to a five day basis under the said rules, and that in view of these materially changed conditions, not to mention the other materially changed conditions herein referred to at the office, it properly applied the correct rate of pay to the new assignment under and in accordance with the provisions of Rule 9 of the schedule agreement.

Therefore, inasmuch as there has been no violation of any of the rules of the agreement as amended or supplemented, as alleged by Employees, the claim to restoration of the monthly rate of the assignment of Agent-Operator at Carthage as it existed prior to June 1, 1960, and that the occupant of the present assignment be allowed pay to the extent of the difference between the earnings of the assignment in effect immediately prior to June 1, 1960 and the earnings of the assignment which became effective June 1, 1960, should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In Bulletin No. 40, dated May 18, 1960, Carrier announced the abolishment of the monthly rated six day position of agent-operator at Carthage. Effective June 1, 1960, it established a new hourly rated position of agent-operator at Carthage on a five day basis. E. E. Miller, who occupied the position of agent-operator at Carthage prior to June 1, 1960, was assigned as agent-operator to the five day position on that date.

The Brotherhood claims that the establishment of the new position was a unilateral reclassification from the six day monthly rated position to a five day hourly rated position in violation of the rules of the Forty Hour Week Agreement, Article II, Section 1(k), Article II, Section 2(c)(3) and Rules 8, 10 and 17(e) of the schedule Agreement.

Carrier points out that the services declined to a point where it was no longer necessary to continue the operation of the Station on Saturday, and, hence, the assignment was placed on a five day basis. It argues that there was a material change in the status of the position resulting from the reduction of work, and, therefore, it was proper under Rule 9 of the Agreement to fix the rate of pay to conform with rates of pay of other positions of the same class.

Although Carrier bulletined a new position of agent-operator at Carthage, the work actually remained the same. In fact, Mr. Miller, the occupant of the position, continued to perform the same duties after June 1, 1960, that he performed prior to that date.

The change from a six day week to a five day week was permissible under Rule 8, as revised by the inauguration of the Forty Hour Week Agreement, Section 3(b)(2). This rule provides for the assignment of one regular rest day per week, Sunday, if possible, for monthly rated positions and states that employees of these positions may be used on the sixth day of the week when needed without additional compensation. Thus, under this regulation, the agent-operator, though on a six day monthly rated position, could work five days a week. A material change in the status of the position did not occur. In the absence of the creation of a new position or of material changes in the conditions of the position, Rule 9 is not applicable, and Carrier was not justified in changing the agreed-upon method of pay to an hourly basis. See Awards 10431 and 10955.

The claim is sustained, and compensation shall be computed on the basis of the agreed-to monthly rate less the amount paid the agent-operator, so that he be made whole for any loss of wages suffered.

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 26th day of October 1965.