

Award No. 14093

Docket No. TE-13841

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that effective September 16, 1960, the third (3rd) trick and relief printer operators position in DK Telegraph Office were abolished and the tour of duty of the second (2nd) trick printer operator changed from 4:00 P. M. to 11:00 P. M. to 9:00 P. M. to 5:00 A. M. The wire chief and assistant wire chiefs, effective September 16, 1960, are required to perform printer operators' work, punching tape, running tape, removing messages from teletype machines and answering teletype switch board during the hours of 3:00 P. M. to 9:00 P. M. and 5:00 A. M. to 7:00 A. M. which has changed the classification of work of these positions and increased the duties and responsibilities to warrant an increase in rate of pay by fifty (50) cents per hour for the wire chief and the assistant wire chiefs, retroactive to September 16, 1960, Regulations 8-A-1 (a and b).

EMPLOYEES' STATEMENT OF FACTS: The facts are fairly revealed in the exchange of correspondence between the District Chairman, the Carrier's Supervising Operator and its Superintendent-Personnel; the Joint Statement prepared by the District Chairman and the Superintendent-Personnel for appeal consideration by the General Chairman and Carrier's Manager, Labor Relations; and the letters exchanged between the Manager, Labor Relations and the General Chairman following the appeal conference, all of which follows:

"Urbana, Ohio
November 7, 1960

Mr. R. H. Neisser
Supervising Operator
230 East Ninth Street
Cincinnati, Ohio

Dear Sir:

In accordance with Regulation 4-T-1 and Article 5 of the August 21, 1954 Agreement the following claim is being presented in behalf of the Wire Chief and Assistant Wire Chiefs in DK Office.

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

The Railway Labor Act, in Section 3, First, 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 Agreements between the parties to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreements 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

The Carrier has shown that under the Agreement no basis exists for a finding that Wire Chief's and Assistant Wire Chief's duties or responsibilities have substantially changed. No jurisdiction exists for granting the Unnamed Claimants the rate increase they request nor to make it effective on any given date.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Board has no right to fix wage rates. In the absence of evidence showing rates of pay "of the same positions on the same Region," we may not fix the amount requested by the Employees in the Statement of Claim. We need only to determine whether or not the duties or responsibilities of the position involved in this dispute were "substantially changed."

Prior to September 19, 1960, the following Printer positions existed at the "DK" Telegraph Office, Columbus, Ohio:

Rest Days

- 1 Printer Operator, 7:30 A. M. to 3:30 P. M. Saturday and Sunday
- 1 Printer Operator, 3:30 P. M. to 11:30 P. M. Monday and Tuesday
- 1 Printer Operator, 11:30 P. M., to 7:30 A. M. Wednesday and Thursday

A regular relief operator worked the assigned positions on Saturday, Sunday, Monday, Tuesday and Wednesday and an extra employe filled the 11:30 P. M. to 7:30 A. M. position on Thursday.

Effective at 7:00 A. M., September 19, 1960, the 11:30 P. M. to 7:30 A. M. position and the relief position were abolished, and the remaining regular positions were rescheduled Monday through Friday for the following hours:

- 1 Printer Operator 7:00 A. M. to 3:00 P. M.
- 1 Printer Operator 9:00 P. M. to 5:00 A. M.

Employees contend that when there were three regular Printer Operator positions and a Relief Printer Operator position "the Wire Chief and the Asst. Wire Chiefs were not required to perform Printer Operators work such as, punching tape, running tape, removing messages from teletype machine and answering teletype switchboard." Since September 19, 1960, Employees say:

"The first trick wire chief performs printer operators work from eight (8 A. M.), until 4:00 P. M., except when an extra printer operator is called in to work. The second trick Asst. wire chief performs printer operators work from 4:00 P. M. until 9:00 P. M., except when an extra printer operator is called in to help out. The third trick Asst. Wire Chief performs printer operators work from 5:00 A. M. until 7:00 A. M. daily. On Saturdays and Sundays there are no printer operators on duty and it is necessary for the Wire Chiefs on first, second and third trick to perform all the duties of the printer operators as well as the duties of the Wire Chief."

Carrier denies that work was added to the Wire Chief or Assistant Wire Chiefs "that was previously handled exclusively by printer operators." On the contrary, "punching tape, running tape, removing messages from teletype machines and answering teletype switchboards has always been performed by Wire Chiefs and Assistants at 'DK' when the occasion demanded." The Wire Chief of the first trick does this work not more than one hour a day and then only when there is no wire trouble, the same is true of the second trick Assistant Wire Chief, and the work of the third trick Assistant Wire Chief has not changed because a printer operator is on duty until 5:00 A. M. and between 5:00 A. M. and 7:00 A. M. the Assistant Wire Chief "is busy getting ready for the C&S Maintainers who report at 7:00 A. M." At that latter hour, a Printer Operator begins his tour of duty.

Regulation 8-A-1 (c) of the Agreement reads:

"When the duties or responsibilities of an established Group 2 position are substantially changed, the rate of pay and/or condition of employment may be changed for such position on the basis of like positions on the same Region as agreed to, in writing, between the duly accredited representative and the proper officer of the Company."

There is no probative evidence in the record showing that the duties or responsibilities of the Wire Chief and Assistant Wire Chiefs have "substantially changed" since September 19, 1960. The mere fact that one Printer Operator position and the Relief Printer Operator position were abolished is not proof that the Chief and Assistant Chief Wire positions were "substantially changed." Neither is evidence of bargained settlements in other locations and regions proof of the fact that there was "substantial change" in these positions.

Regulation 8-A-1 (c) requires more substantive evidence and a clearer showing that the positions were "substantially changed." We may not rely solely on the assumption that the abolishment of one position substantially changes work or responsibilities of another. Employees have not met the burden of proof.

On the basis of the record, there is no merit to the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.