Award No. 14160
Docket No. TE-13946

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES 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 on October 15, 22, 29, November 5, 11, 12, 19, 26, December 3, 10, 17, 23, 25, 1961, January 7, 14, 21, 28, February 4, 11, 25, March 4, 11, 18, 25, April 7, 8 and 15, 1962, it required or permitted employes not covered by the Agreement to handle train orders at Shops, Nashville, Tennessee at a time and/or on a day the operator-clerk was not on duty (total 27 dates).

2. Carrier shall be required to compensate the employes covered by the Agreement and entitled to perform this work, as follows:

Parker Cole, one call for October 15, 1961.

Mrs. Juanita L. Alley, one call for each day October 22, 29, November 5, 12, 19, 26, 1961, February 25 and March 4, 1962, and also eight (8) hours' pay at the time and one-half rate, less call paid for November 11, 1961.

Mrs. Mila J. Pride, one call for each day December 3, 10, 17, 25, 1961, January 7, 14, 21, 28, February 4, 11, March 11, 18, 25, April 8 and 15, 1962, and also eight (8) hours' pay at the time and one-half rate, less call paid, for each day December 23, 1961 and April 7, 1962.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1924, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

There is one position covered by the Agreement at Shops, Nashville, Tennessee. The position is classified as operator-clerk with an assignment of 6:00 A. M. to 3:00 P. M. (one hour off for lunch) Monday through Friday. Mrs.

As example, the facts of instant case parallel those of your Award No. 10237 in many respects, with the obvious difference that the character of the work here complained of is limited to the handling of train orders for one departing train on any one day of the claim in comparison with what appears to be a substantial volume of train order and communications work claimed in the award referred to. And it is also apparent that the governing train order rule here applicable is even more definite in its denial of the instant claim in the light of the circumstances than would be the standard train order rule in such circumstances.

Carrier also invokes other awards of your Board cited by the GM&O Railroad in the case resulting in Award No. 10237, i.e., Nos. 7073, 6946, 6945, 6944, 6943, 6856, 6839, 6602, 6363, 6187, 5866, 5803, 5331, 5318, 5283, 4992 and 4969 holding that it is the duty of Carrier to economically manage its properties, and other supporting awards of your Board Nos. 4992, 5283, 5318, 5468, 6032, 6676 and quotations therefrom in the position of GM&O, as well as Award 6996, same parties to instant dispute, and already fully discussed in this submission.

For the reasons given in this submission, Carrier submits that not only was there no violation of the agreement in the circumstances of this case, but that the claim of Employes to the right to perform the duties complained of is wholly devoid of merit from any standpoint.

Carrier, therefore, respectfully requests that the claim be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this case are not in dispute. The Carrier agrees that the work on the dates and times in question was assigned as stated in the Organization claim.

What is in dispute is the applicability of Rule 8(1n) of the so-called Forty Hour Week Agreement which as of September 1, 1949 was added to the basic agreement between these parties. This rule reads as follows:

> "(n) Work on Unassigned Days — Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Organization argued that the proper interpretation of this rule is that the work must be assigned to the individual who during his normal work day performs this work. The Carrier took the position that for this rule to be applied it was necessary to show that there either was an explicit reservation of work for that position set forth in the agreement or that through a system wide practice this work had always been exclusively performed by this group and that this system wide practice had in effect merged into the agreement as part of the Scope Rule.

The Carrier contended that although Rule 12 of the agreement reserved certain work to Telegraphers it was limited to transmitting or receiving "train orders or messages by telephone or telegraph * * *" The work involved here did not in the Carrier's view fall within this category because the only tasks performed were the copying of previous train orders. With regard to

any system wide practice the Carrier asserted that Dispatchers had historically and continuously performed this work for this Carrier throughout the system. A number of awards were cited to buttress the argument that no system wide exclusively running in favor of the Telegraphers had been established. Award 6996 [Carter], 10400 [Mitchell], 10917 [Boyd], 11565 [Sempliner].

The Organization argued that irrespective of what may be the correct interpretation of the Scope Rule vis-a-vis reservation of work, the addition to the contract in 1949 modified its application by reserving to the employe who regularly performs certain work, any additional assignment of that work to the exclusion of any other employe or group (except one who has not worked 40 hours that week).

In previous cases this Board has held that standing above, for there to be a finding of work reservation to a particular group at a particular location it must be established that throughout the system a practice existed without exception of work reservation for the group. These cases in effect said that where the exclusivity was less than system wide there could not under a Scope Rule whose application was system wide be a finding of limited work reservation.

The Carrier seeks to make such a finding a condition precedent to the application of Rule 8(1n)). We believe that to so require this would be incorrect. The awards of work reservation under the Scope Rule basically run in favor of a craft not a particular individual. If more than one craft does the same work within the system the claim of work reservation fails. However, the purpose and intent of Rule 8(1n) is of a different nature. As we see it this Rule is intended to accord individual occupants of particular positions certain rights and protections.

In essence this right or protection is that if a particular task has to be worked during a period when that task is not normally assigned to any individual the employe who regularly performs that task will receive the overtime assignment.

This is not a work reservation to a craft. Indeed within the system such work may be performed by other crafts. Rather it is a protection to an individual employe and as such is quite compatible with the above referred to awards concerning work reservations. If we were to find that the Scope Rule requirements applied to Rule 8(1n) we would be substantially and materially negating its meaning.

Awards of this Board in our opinion substantiate this interpretation. Award 6689 contains an excellent discussion of this issue and is particularly pertinent because it deals with the jurisdictional schism between the Dispatchers and the Telegraphers. In that award Referee Leiserson in reference to Award 5256 said:

> "The Board found that if the train dispatchers were doing such work in 1929, the train dispatcher was properly given the work, but if in 1942 when the dispute arose, the work was 'substantially different in character and volume from what it was in 1929, the telegraphers are entitled to it under their Agreement.'"

Leiserson, however, went on to say:

> "This is no authority for diverting work from an existing assignment merely because the telegraphers did not have exclusive rights."

Later cases of this Board have followed this reasoning [see Award 13824 (Dorsey), 14071 (Stark) to mention two]

This then brings us to the second issue, namely was there a violation of Rule 8(1n)? We are of the opinion that there was. We agree with the Carrier that work of this nature is not the exclusive jurisdiction of the Telegraphers either under the Scope Rule or under Rule 12. It was, however, the work regularly performed by these Claimants during their normal work days at shops. As such it was not part of any "assignment" as that term is used in Rule 8(1n). It therefore should be performed by the regular employes which in this case are the Claimants.

The Carrier has also contended it has the right to blank holidays. The Awards of this Board sustain this right. However, there must be a true blank. In this case we find that the work was performed, and since the Claimants were the regular employes, they were entitled to perform it.

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 was violated.

AWARD

Claim is allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.