

Award No. 14193
Docket No. TE-13812

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — WESTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that:

1. The Carrier violated the Agreement between the parties when, beginning February 22, 1961, it failed to permit D. L. Alderman and O. R. Watson, regular occupants of 7:45 A. M. to 3:45 P. M. positions at Las Vegas, New Mexico, to work their rest days.

2. The Carrier shall be required to compensate D. L. Alderman for eight hours' pay at the overtime rate for each Saturday and Sunday beginning February 22, 1961.

3. The Carrier shall also be required to compensate O. R. Watson for eight hours' pay at the overtime rate for each Wednesday and Thursday beginning February 22, 1961.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

Prior to February 22, 1961, the Class 2 telegraph force at the Las Vegas, New Mexico Relay Office was:

POSITION	ASSIGNED HOURS	REST DAYS
Telegrapher-Printer Clerk	7:45 A. M. to 3:45 P. M.	Saturday and Sunday
Printer Clerk	9:00 A. M. to 5:00 P. M.	Saturday and Sunday
Telegrapher	3:45 P. M. to 11:45 P. M.	Monday and Tuesday
Relief Telegrapher-Printer Clerk	Various	Thursday and Friday

Effective February 22, 1961, the Relief Position and the 9:00 A. M. to 5:00 P. M. Printer Clerk position was abolished and a new 7:45 A. M. to 3:45 P. M. Telegrapher-Printer Clerk position was established. Effective February 22, 1961, the Class 2 telegraph force at the Las Vegas, New Mexico Relay Office was:

in line with the thoughts expressed in the earlier discussion of the consecutive day-off problem.”
(Emphasis ours).

It should be abundantly clear from the foregoing that it was the intent and purpose of the Emergency Board's recommendations, as well as the Emergency Board members, who also incidentally acted as arbitrators in determining the language of the rules which were subsequently incorporated into the so-called National 40-Hour Week Agreement of March 19, 1949, effective September 1, 1949, that the Carriers were to be allowed as much flexibility as possible in their operations, including the right to stagger the work weeks of the employes under the recommended 40-hour week which was also to be applied in a manner that was the least disturbing and costly to the Carriers. The Carrier's rights to stagger the work weeks, in accordance with their operational requirements, were not only expressed in the Emergency Board's report, findings and recommendations, but was also incorporated into the very language of Article II, Section 1(a) of the 40-hour week Agreement of March 19, 1949, effective September 1, 1949, and which was adopted by the parties hereto and incorporated into the rule, which now appears as Article III, Section 6 of the June 1, 1951 Telegraphers' Agreement.

The Third Division has consistently recognized and held that the burden of proof of an Agreement violation is upon the claimant, i.e., the Employes and The Order of Railroad Telegraphers, in the instant dispute. See Third Division Awards 5662, 5706, 5718, 5965, 6091 and many others. The Employes have not, in their handling of the instant dispute on the property, submitted any proof of an Agreement violation and the Carrier is quite certain that they will likewise be unable to meet the burden of proof of an Agreement violation in their ex parte submission of the instant dispute to the Third Division.

Without prejudice to its position, as previously set forth herein, that the claim of the Employes in the instant dispute is entirely without support under the Agreement rules, the Carrier further asserts that the Employes' claim that the Telegrapher-Printer Clerks be compensated on the basis of eight (8) hours at penalty time and one-half rates for work not performed on their rest days is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employes in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

OPINION OF BOARD: Prior to February 22, 1961, the assignments of Class 2 telegraph service positions in the Las Vegas relay office were as follows:

"Name	Occupation	Rate of Pay	Assigned Hours		Rest Days
			From	To	
O. R. Watson	Telegr-Prtr Clk	\$2.565 Hr	7:45A	3:45P	Sat-Sun
J. J. Elliott	Telegr.	2.59	3:45P	11:45P	Mon-Tue
Relief Position					
D. L. Alderman	Telegr-Prtr Clk	2.565	7:45A	3:45P	Sat-Sun
			3:45P	11:45P	Mon-Tue
			11:45P	7:45A	Wed
					Thur-Fri"

Effective February 22, 1961, the Relief Position was abolished and a new 7:45 A. M. to 3:45 P. M. Telegrapher-Printer Clerk position was established. The following Class 2 assignments were placed in effect February 22, 1961:

Name	Occupation	Rate of Pay	Assigned Hours		Rest Days
			From	To	
"D. L. Alderman	Telegr-Prtr Clk	\$2.565 Hr.	7:45A	3:45P	Sat-Sun
O. R. Watson	Telegr-Prtr Clk	2.565 Hr.	7.45A	3:45P	Wed-Thur
J. J. Elliott	Telegr	2.59 Hr.	3:45P	11:45P	Sat-Sun"

The Employees contend that the two 7:45 A. M. to 3:45 P. M. positions are seven day positions. Work on rest days were not covered by regular relief assignments and Employees state Carrier violated the agreement when it failed to call the regular occupants of these positions to work their rest days.

The Employees filed claim in behalf of the regular occupants, which was subsequently appealed to the highest officer designated by the Carrier to handle such disputes, and was denied.

Carrier contends that the rest days were protected under a staggered workweek arrangement under the provision of Article III, Section 6, of the Telegraphers' Agreement.

Article III, Section 6 reads:

"Section 6. The Carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in these Sections 6-22, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement."

The question of the Carrier's right to stagger workweeks has been before this Board many times. We recognize that there have been conflicting awards on this issue. The great majority of the awards of this Board have held that the staggering of workweeks is an integral part of Article III, Section 6.

Award 6184 (Wenke) states:

"The determination of the number of employes needed to perform its work is the function of Management except as it has limited itself by agreement. Under the rules quoted the assignment of relief employes is not a condition precedent to the establishment of seven day positions. Relief assignments are only required to be made when there is work necessary to be done. When all the work can be efficiently performed by staggering of regularly assigned employes the necessity for relief assignments on rest days does not exist. In other words, Carrier may, in accordance with its operational requirements, stagger the work week assignments of employes regularly assigned to seven day service so that the rest days of some will coincide with the work days of others and thus make it possible for the regular employe to do all the work necessary to have performed on those days, without the necessity of any relief. It should be understood that such employes must be of the same class and within the same seniority district."

Award 6946 (Carter) states:

"The next question that naturally follows is what positions might be staggered to accomplish the purposes of the agreement. It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one. Two positions occupied by a signaller and a telegrapher, for instance, could not be staggered as craft lines are not wiped out by the 40 Hour Week Agreement. Neither could two employees in the same craft holding positions in different classes be staggered where common seniority between the classes does not exist. But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other. If these are the proper concepts contained in the 40 Hour Week Agreement, and we think they are, the Carrier had the right to stagger the two positions in the dispute before us. The fact that Carrier changed the duties of the positions as of September 1, 1949, in order that the positions could be staggered to meet operational needs is not a material fact. Either party may do these things which the contract permits for any reason that he deems sufficient."

We are of the opinion that the over whelming preponderance of the awards of this Board support the Carrier's position and the Carrier is not restricted from staggering workweeks of Employees within the same craft, classes, and Seniority Districts.

We will deny 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.