

Award No. 14213
Docket No. TE-11337

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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 in changing rest days it required L. L. Johnson, Telegrapher-Leverman-Clerk at Clear Lake Jct., Iowa and R. L. Peterson, Telegrapher-Clerk at Clarion, Iowa to suspend work during regular hours on the fifth day of their work week December 16, 1957.

2. Carrier shall be required to compensate L. L. Johnson and R. L. Peterson for eight hours at the straight time rate of their respective positions on December 16, 1957.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Clear Lake Jct. and Clarion, Iowa, are stations located on the Minnesota Division of this Carrier's lines. There are three seven-day positions under the agreement at Clear Lake Jct. providing continuous service, we are here concerned with the second shift Telegrapher-Leverman-Clerk position with assigned hours of 4:00 P. M. to 12 o'clock midnight.

There are three positions under the agreement at Clarion, one is that of Agent (Group 2) covered by Addendum No. 2 and two seven-day positions of Telegrapher-Clerk, we are here concerned with the second shift Telegrapher-Clerk position with assigned hours of 7:00 P. M. to 3:00 A. M.

At the time cause for this claim arose L. L. Johnson was the regularly assigned occupant of the second shift Telegrapher-Leverman-Clerk position at Clear Lake Jct., having acquired the position by the exercise of seniority (bidding on a bulletined vacancy) about June 1, 1956. R. L. Peterson was the

claim is concerned; nor is there any other Rule in the Agreement that can be used to void the claim.

Yours truly,

/s/ L. M. Kingsbury
General Chairman

"CHICAGO GREAT WESTERN RAILWAY COMPANY

Kansas City, Missouri
December 1, 1958
File: O-305

Mr. L. M. Kingsbury, General Chairman
The Order of Railroad Telegraphers
P. O. Box 442
Manning, Iowa

Dear Sir:

This has reference to exchange of correspondence ending with your letter November 28, relative to your Claim No. G-2-5.80:

The record is clear that there has been no attempt on part of the Carrier to 'distort this dispute' as you have alleged. The record is equally clear that the 'point' Carrier has made, and the 'point' you strive to evade, is one generally recognized by the Third Division, National Railroad Adjustment Board, in a long series of awards; viz., the burden of proof in any claim is upon the party who seeks its allowance, and this you have patently failed to do.

The record in this case speaks for itself—nothing is to be gained by any further exchange of correspondence on the subject and file can be closed insofar as the Carrier is concerned.

Yours truly,

/s/ D. K. Lawson
Assistant to President

OPINION OF BOARD: Contention in this case arose out of the change of assigned rest days of L. L. Johnson, Telegrapher-Leverman-Clerk at Clear Lake Junction, Iowa and R. L. Peterson, Telegrapher-Clerk at Clarion, Iowa.

Claim was made that this change suspended them from work December 16, 1957 in violation of Rule 8, Section 1(a), which rule establishes a workweek of forty hours, consisting of five days of eight hours each.

The issue raised in these claims has been before this Board many times substantially or identically and settled in Award Nos. 7324, 8103, 8144, 8868, 10289, 10517, 10786, 10875, 11460, 11474, 11990, 11991, 11992, 12455, 12601, 12721, 12722 and 12798 among others, all of which decisions sustain the claim presented herein.

As to the contention by the Carrier that a different claim is here presented there was presented for adjudication at the property level, such contention is without merit since the claim as here presented has not been materially changed in appeal to this Board.

As to the contention by the Carrier that the claim should be denied by reason of the failure of the association to observe the time limit rule for appeals as set out in Rule 23(b) of the subject Agreement, this issue is procedural in nature and one which should have been raised in discussions at the property level. By the failure to so timely raise the issue it must be considered as having been waived by the Carrier as a defense and it may not now be raised initially before this Board.

Accordingly, the claim will be sustained.

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 violated.

AWARD

Claim sustained.

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.

CARRIER MEMBERS' DISSENT TO AWARD 14213 DOCKET TE-11337 (Referee Rambo)

For the reasons set forth in our Dissent to Award 11474, we dissent to the Majority's decision in this case.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
W. F. Euker
C. H. Manoogian