

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY
(Wheeling and Lake Erie District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District), that:

1. The Carrier violated the Agreement between the parties hereto, when on or about December 15, 1957, it reduced the 1st shift Telegrapher-Clerk position at Mingo Yard, Ohio, from a six day to a five day position, and concurrent therewith, assigned the work arising on the sixth day of the position to an employe outside the scope of said agreement.

2. The Carrier shall, because of the violation set out above, compensate J. Antenuci, regular incumbent of the first shift Telegrapher-Clerk position at Mingo Yard, Ohio or his successor, a day's pay at the time and one-half rate for each day upon which an employe not covered by the parties' agreement performs the work on the sixth day of the claimant's position.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective, as to rules, February 1, 1952, and as to rates, effective February 1, 1951, and as revised.

At page 58 of said agreement, wage scale, are listed the positions at Mingo Yard, Ohio on the effective date of said agreement. The listing is:

| Location | Position | Hourly Rate |
|------------|----------------------|-------------|
| Mingo Yard | Telegrapher-Clerks 2 | \$1.674 |

Attached hereto and made a part hereof is ORT Exhibit No. 1, showing track arrangements and other facility identifications.

Prior to December 15, 1957 the first shift telegrapher-clerk's position at Mingo Yard, occupied by J. Antenuci, its regular incumbent, had a work week of Monday through Sunday, Saturday and Sundays rest days, with Saturday being relieved by a rest day relief employe. The second shift telegrapher-clerk's

From the foregoing it is evident that the subject matter of this dispute has been handled on the property in the manner prescribed by law and the rules of procedure of this Honorable Board but failed of settlement. The dispute is, therefore, and herewith, appealed to your Honorable Board for adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Mingo is a small yard on the Carrier's Steubenville Branch. It is not a terminal for any road crews. The number of yard crews worked at that point varies from as many as four during the iron ore season to one crew during the winter season.

Prior to December 18, 1957, there were two telegrapher positions at that point. Because of a decrease in business telegrapher work on second trick disappeared and the second trick telegrapher position was abolished effective that date.

Effective January 5, 1958, because the telegrapher work on first trick on Saturdays had gradually disappeared the position was changed from a six to a five-day position.

Attached hereto marked Carrier's Exhibits A to N, inclusive, are copies of correspondence which indicates the handling given the claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 18, 1957, there were a first and a second trick telegrapher position assigned to Mingo Yard. The second trick position was abolished as of December 18, 1957, and the first trick position was reduced from a six day to a five day position, Mondays through Fridays effective January 5, 1958. Claim is that Carrier assigned work of the first trick position on Saturdays to an employe not covered by the Agreement. Employes argue that such Saturday assignments violated Rules 1, 2, 8 and 26 of the Agreement. It is Carrier's position that because the work complained of is not exclusively Employes', there was no breach of the Agreement.

The record does not prove that the work complained of is of a kind reserved exclusively to Employes. We have held (See Award 14703) that a violation of Rule 8(1) "Work on Unassigned Days," may take place even if the work involved is not of a kind reserved exclusively to Employes. If work is performed on his regularly assigned days exclusively by the incumbent of a position, that work belongs to that position, and on unassigned days of that position, should be performed by the incumbent or by an available, qualified extra or unassigned employe. On the property Employes pressed as the core of their complaint that work belonging to Claimant's five day position was performed on the sixth day by the Yardmaster whose position is not within the Agreement. In its original claim, Employes asserted that all telephone and telegraph service required at Mingo Yard on Saturdays had been the duty of the 1st trick telegrapher position until the alleged violation began.

In response to a question as to what work performed by the Yardmaster on Saturdays was complained of by Employes, the General Chairman Howes listed six items: 1. sending by telephone a report of box cars, 2. ordering cars,

3. handling DB messages on cars, 4. writing up inbound trains, 5. listing ore going to dumper, and 6. sending set off messages to the switch run at Warrenton. In reply, on the next day, Carrier's Personnel Director wrote about items numbered above 1, 2, 3, and 6: "I . . . find no record of such occurrences taking place each Saturday.", and asked for more specific evidence. In a subsequent letter to the General Chairman, Director Komarek repeats his request for specific evidence and specific dates about these items and wrote about items 4 and 5: "I find that this, being clerical work, is not exclusively the work of telegraphers nor, in this specific instance, is it performed exclusively by the telegrapher position involved during the week." Thus we find that the record shows that Carrier selectively denied about two of the six items of work complained of that they were work performed exclusively by the telegrapher position involved during the week; we find therefore that the remaining items were work performed during the week exclusively by the telegrapher position in question as claimed by Employees and belonged to that position.

Nowhere on the property did Carrier categorically deny that the Yardmaster performed the involved work on Saturdays; the closest Carrier came to such a denial is quoted above in the statement in Director Komarek's letter that he **found no record of the occurrences taking place each Saturday**. Employees have placed in the record the Statement of the General Chairman that he overheard some of the alleged violative work being done by the Yardmaster each Saturday (statement in letter dated June 1, 1959). Absent categorical denial or any rebuttal evidence by Carrier that the work was done, we conclude that the work complained of was done each Saturday as claimed by Employees.

Employees first presented their claim on May 2, 1958, alleging a continuing violation beginning on December 15, 1957. From this Carrier contends that even if a violation had occurred, no pay award should be made prior to March 2, 1958. Employees argue that the pay award should be made starting 60 days prior to May 2, 1958. March 8, 1958, was the first Saturday less than 60 days prior to the filing of the claim and we will limit the retroactivity of our award to that date.

Carrier also argues that, should we find a violation, payment should be limited to the minimum of two hours pay at time and one-half as provided in Rule 8(k). We are not convinced from the record that more than a call was involved and will limit pay to two hours at time and one-half for each Saturday on which the violation occurred and until it ceases.

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 Carrier violated the Agreement.

AWARD

Claim sustained as modified in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.