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Award No. 15633
Docket No. TE-14626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Colorado and Southern Railway Company, that:

1. Carrier violated the terms of an Agreement between the parties hereto when on March 17, 18 and 20, 1963, it blanked the third shift telegrapher's position at Fort Collins, Colorado while the work of the position remained to be performed and transferred its performance in part to a telegrapher and in part to a yard clerk, the latter an employee not covered by said Agreement, on a call basis.

2. The Carrier shall, because of the violations set out in paragraph 1 hereof, compensate the following employees in the manner hereinafter indicated:

(a) M. W. Hankins, senior employee at Fort Collins idle on his rest day, a day's pay (8 hours) at the time and one-half rate of the third shift position Fort Collins, for March 17, 1963.

(b) G. W. Colvin, senior employee at Fort Collins idle on his rest day, a day's pay (8 hours) at the time and one-half rate of the third shift position Fort Collins, for March 18, 1963.

(c) S. F. Pope, senior employee at Fort Collins idle on his rest day, a day's pay (8 hours) at the time and one-half rate of the third shift position Fort Collins, for March 20, 1963.

3. Carrier violated the terms of an Agreement between the parties hereto when on April 4 and 5, 1963, it blanked the third shift telegrapher's position at Fort Collins, Colorado while the work of the position remained to be performed and transferred its

performance to a yard clerk, an employe not covered by said Agreement, on a call basis.

4. Carrier shall, because of the violations set out in the above paragraph, compensate the following employe in the manner hereinafter indicated:

(a) B. L. Kimberling, regular occupant of the third shift telegrapher's position, idle on his rest days, a day's pay (8 hours) at the time and one-half rate for each date April 4 and 5, 1963.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between The Colorado and Southern Railway Company, hereinafter referred to as Carrier, and its employes represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization or Employes, effective October 1, 1948, including changes and agreed-to interpretations to the date of the reissue, January 1, 1955, and as otherwise amended. Copies of said Agreement, as required by law, are assumed to be on file with this Board and are, by this reference, made a part hereof.

At page 36 of said Agreement (Rule 38) are listed the positions existing at Fort Collins, Colorado, on the effective date thereof. The listing for ready reference reads:

| "Location | Classification | Rate Per Hour |
|--------------|----------------|---------------|
| Fort Collins | T | 1.865 |
| | T | 1.825 |
| | T | 1.825" |

In addition to the positions listed above, the Carrier, pursuant to the provisions of Rule 11, Section 1(e), the Forty Hour Week Rule, established a regular relief assignment to perform the service necessary to be performed on the sixth and seventh days of the listed positions. Because of service requirements on the listed positions, the Carrier, under the provisions of Rule 11, Section 1(d) made these seven-day positions.

M. W. Hankins, on the dates involved in the claims, was the regular occupant of the first shift position at Fort Collins. His assigned hours were 8:00 A.M. to 4:00 P.M., work week Monday through Friday, rest days Saturday and Sunday.

G. W. Colvin, also on the dates involved in the claims, was the regular occupant of the second shift position at Fort Collins with assigned hours 4:00 P.M. to 12:00 Midnight; work week Tuesday through Saturday, Sunday and Monday rest days.

B. L. Kimberling, also on the dates involved in the claims was the regular occupant of the third shift telegrapher's position at Fort Collins, with assigned hours 12:00 Midnight to 8:00 A.M.; work week Saturday through Wednesday, rest days Thursday and Friday.

S. F. Pope, on the dates involved in the claims, was the regular occupant of rest day relief position No. 3 at Fort Collins. He filled the rest day assignments at Fort Collins on the following basis: Third shift, Thursday

"Establish a rule or amend existing rules to recognize the Carriers' rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees.

This proposal is disposed of with the understanding that present rules and practices are undisturbed."

For many years, at least sixty, on the Colorado and Southern Railway Company, clerical employees at Fort Collins and numerous other points on the Railway (Cheyenne, Loveland, Longmont, Boulder, Walsenburg, Trinidad, etc.), particularly the regularly assigned position of Car Clerk at Fort Collins, have assumed the duties of or assisted in the handling of head-end commodities (mail, baggage, express, etc.) to and from stations and passenger trains. The practice followed on the dates of the instant claim was materially no different than is the established custom on other dates. The Car Clerk performed no Telegrapher duties on any of the dates specified in the claim and the claimant Telegraphers performed no duties other than Telegrapher duties when they were called under the provisions of Telegraphers' Rule 9 on March 17, 18 and 20, 1963; nor were they deprived of any Telegrapher work on April 4 and 5, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Two separate Claims have been consolidated by the parties, Parts 1 and 2 of the Statement of Claim constitute Claim No. 1, whereas Parts 3 and 4 constitute Claim No. 2.

CLAIM NO. 1

On the claim dates (March 17, 18 and 20, 1963), as well as March 19, 1963, the regularly assigned third shift telegrapher was on a voluntary leave of absence. He occupied a seven day a week position, Saturday through Wednesday, with rest days on Thursday and Friday. Carrier partially blanked the vacant position during the incumbent's absence, but assigned necessary telegrapher duties on the specific dates of the instant claim to two other regularly assigned telegraphers under the provisions of Rule 9 of the applicable agreement between the parties. These other regular assigned telegraphers were allowed a minimum of three hours' pay for each such call.

Petitioner contends that Carrier improperly permitted the regular occupant of the seven-day position to lay-off when no extra available employees could fill the vacancy and used both covered employees and non-covered employees to perform the duties of the vacant position. It is Petitioner's basic position that Carrier was required to fill the temporary vacancy with the Claimants on their respective rest days in the absence of extra employees, and that Carrier violated the applicable provisions of the Agreement when it invoked the Call Rule thereof for the purpose of having necessary telegrapher duties performed during the absence of the incumbent. Moreover, Petitioner asserts that Carrier used a yard clerk on a call basis to perform some of the duties of the vacant position.

A careful analysis of the relevant provisions of the Agreement and various Awards of this Board cited by the parties compels us to find that Carrier was not required to fill the temporary vacancy on the claim dates. The incumbent was absent on personal business, and no rule in the Agreement, including Rule 11, prohibits Carrier from blanking a position when the occupant is absent because of illness or personal business. Awards 5589, 5590, 6691 and 13162. Moreover, we have held that guarantees run to the

employee, rather than the position under the Forty-Hour Week Agreement. Award 5590. There is no evidence before us that Carrier attempted to evade its obligation to fully man the position when it determined that it was unnecessary to require a full complement of employees during the temporary absence of the regular incumbent on the third shift. Award 7591.

Petitioner also asserts that certain work belonging to the position was performed by clerical employees not covered by the Agreement. Specifically, the disputed work is described as "head-end work", which involves the handling of mail, baggage and express. Carrier concedes that clerical employees "have assumed the duties of or assisted in the handling of head-end commodities" for years, and that the car clerk at this particular point performed such work on the claim dates "as part of his regularly assigned duties." Petitioner has offered no evidence to refute Carrier's defense that other employees have performed the disputed "head-end" work on the property.

The Scope Rule of the applicable Agreement is general, and does not specifically reserve the "head-end" work to the telegrapher position. The record discloses that employees other than those covered by the Agreement have historically performed such work. Therefore, there is no basis for concluding that the disputed work belonged exclusively to employees represented by Petitioner, and we find no merit in Petitioner's contention. Awards 8261 and 14643.

In view of the foregoing, we will deny Claim No. 1.

CLAIM NO. 2

On the claim dates (April 4 and 5, 1963), the regularly assigned Relief Telegrapher was on his assigned annual vacation and Claimant, the regularly assigned incumbent of third shift telegrapher position, was off on his assigned rest days. Carrier blanked the position on the claim dates and the regularly assigned Car Clerk handled all the "head-end" work that was required on both days. The record discloses that no telegrapher was called on either date, although a student telegrapher thereafter performed service in the vacancy on April 6, 1963. Petitioner contends that Claimant was denied his right to work during the rest days of his position in the absence of the regular relief employee or an available extra employee. Petitioner avers that the work of the position was performed by others, and that the incumbent of the position should have been called for service on the claim dates as no extra employee was available to fill the vacancy. Petitioner cites our Award 11604 as controlling precedent for the instant dispute.

Carrier contends that the train order office was closed during the third shift on the claim dates, and that no telegrapher was required on either date to perform work belonging exclusively to the telegraphers. As to the handling of "head-end commodities", Carrier maintains that the regularly assigned Car Clerk performed all such work on both dates "as part of his regularly assigned duties."

We concur in Petitioner's contention that our earlier Award 11604 would constitute precedent for a sustaining Award herein if the factual situations were identical. There we stated in part as follows:

"The Petitioner's theory of the case poses no challenge to the right of Carrier to blank a position. (Cf. Award 11307) The thrust of its argument goes to the propriety of blanking a position and then having the work done not by the regular incumbent, but by others."

Here, we find no probative evidence that any work belonging exclusively to telegraphers was performed by others while the position was blanked by Carrier. The only work normally performed by the incumbent that was required on either claim date was the handling of "head-end commodities." For reasons hereinbefore stated, we find that Petitioner has failed to show that such work belongs exclusively to telegraphers.

Accordingly, we must conclude that there was no transfer of work from the blanked position to others in violation of the Agreement or the fundamental principles set forth in Award 11604. Therefore, Claim No. 2 also must be denied.

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.

AWARD

Claim No. 1 is denied.

Claim No. 2 is denied.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 16th day of June 1967.