



Award No. 15850
Docket No. TE-14601

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway, that:

1. Carrier violated the Agreement between the parties when on June 21, 1962, it required a telegrapher at DeSmet, Montana to deliver train order to the crew of Extra 292 East at Schilling, Montana.

2. Because of this violation Carrier shall compensate idle telegrapher I. M. Swarts in the amount of a day's pay of eight (8) hours for June 21, 1962.

3. Carrier violated the Agreement between the parties when on October 21, 1962, it required a telegrapher at Superior, Montana to deliver train order to the crew of Work Extra 310 at Westfall, Montana.

4. Because of this violation Carrier shall compensate idle telegrapher C. F. Facincani in the amount of a day's pay of eight (8) hours for October 21, 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective April 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

There are two claims involved in this dispute. The two cases were handled together by the General Chairman at the conclusion of the handling on the property and are, therefore, combined in this submission.

The correspondence exchanged between the parties relative the violation at Schilling, Montana, paragraphs 1 and 2 of Statement of Claim, through the decision of Carrier's highest officer, is shown in ORT Exhibits 1 through 10, and that involving the violation at Westfall, Montana, paragraph 3 and 4 of Statement of Claim, in ORT Exhibits 11 through 24. General Chairman J. L. Askew's letter of May 3, 1963 to G. M. Hare, Chief of Labor Relations, is reproduced at ORT Exhibit 25, and former General Chairman J. I. Steed's letter of May 20, 1963 to Mr. Hare as ORT Exhibit 26.

CARRIER'S STATEMENT OF FACTS:

CLAIM OF I. M. SWARTS — JUNE 21, 1962

D. L. Puyear is assigned to a position of telegrapher at DeSmet, Montana, working from 3:45 P. M. to 11:45 P. M. Wednesday through Sunday.

Miss I. M. Swarts is assigned to a rest day relief position in Missoula, working from Saturday through Wednesday.

Schilling is a blind siding.

DeSmet is located 6.6 miles west of Missoula, and Schilling is located 6.1 miles west of DeSmet.

On Thursday, June 21, 1962, D. L. Puyear copied Train Order No. 323, addressed to Extra 292 East at Schilling, and then delivered this train order to Extra 292 East at Schilling with the use of his private automobile. Mr. Schilling copied Train Order No. 323 and delivered it to the addressees during his regular tour of duty.

Claim has been presented in behalf of Miss I. M. Swarts for payment of eight hours at straight time rate on June 21, 1962, which claim has been declined.

CLAIM OF C. F. FACINCANI — OCTOBER 21, 1962

R. G. Drew as assigned to a position of telegrapher at Superior, Montana, working from 4:00 P. M. to 12:00 Midnight Thursday through Monday.

C. F. Facincani is assigned to a position of telegrapher at Superior, working from 8:00 A. M. to 4:00 P. M. Monday through Friday.

Westfall is a blind siding located 7.5 miles east of Superior.

On Sunday, October 21, 1962, R. G. Drew copied Train Order No. 311, addressed to Extra 310 West at Westfall, and then delivered this train order to the addressees at Westfall with the use of his private automobile. Mr. Drew copied Train Order No. 311 and delivered it to the addressees during his regular tour of duty.

Claim has been presented in behalf of C. F. Facincani for payment of eight hours at straight time rate on October 21, 1962, which claim has been declined.

OPINION OF BOARD: There are two claims involved in this submission. They have been combined because they are quite similar in that the same basic issues are raised, the same Agreement is applicable, and the Parties to the dispute handled them together on the property.

In each of the grievances, a telegrapher at a station where telegraphers are employed was directed to deliver a train order received and copied at his station to a train crew at a nearby place (sometimes referred to as a "blind siding") where no telegrapher position existed. In one case the distance to the point of delivery was 7.5 miles; the other, 6.1 miles. In both cases, after the

telegrapher completed the delivery of the train order, he returned to his regular station to report said delivery to the train dispatcher.

The Organization considers these actions on the part of the Carrier to be violations of the Agreement of the Parties, contending that various rules thereof were not complied with: the "Scope" rule, the Seniority rules, Rule 25. (a) — which defines a temporary position, and Rule 67. (a) — which defines a "shift" as a "tour of duty constituting a day's work for one or more employees performing the same class of work covered by this agreement at the same station who begin work and quit work at the same time . . ."

In the cases at hand, each of the telegraphers performed the disputed work during the regularly assigned hours of his position. The Organization claims that in each of the instances an idle telegrapher should be compensated in the amount of a day's pay of eight (8) hours.

Before we consider the issues referred to above, a procedural question raised by the Organization should be resolved. The Organization alleges that Rule 40. (a) (taken from Article V of the National Agreement of 1954) was violated because Carrier "did not give reason for disallowing the claim," e.g., the Organization contends that a declination of the following type: "This claim is not sustained by schedule rule or agreement and is therefore further declined" is not acceptable. We believe that it is now well-settled that the Board rejects this theory, which has been presented before in other cases. In a similar case, we held in Award 11208 (Coburn): "A basic and valid reason for denying any claim is that the agreement was not violated because implicit in the statement is the opinion that the claim lacks support under the rules of the agreement." Award 11208 was adopted without dissent. We agree with this decision; we believe the reasons given for the making of it are sound; and, therefore, the argumentation of the Organization in this regard is rejected as incorrect.

Turning to the merits, we are not persuaded that any rule of the Agreement was violated by the Carrier in the handling of the instant Claim. The seniority rules of the Agreement are not applicable to the two situations presented by this Claim, because in our opinion, a seniority question is not involved. The seniority rules are applicable in regard to such matters as: (1) when a vacancy in an established position occurs, (2) when a new position is created, (3) when displacement rights are exercised, (4) when employees are considered for promotion, and other situations not relevant to the Claim at hand. In this Claim, seniority could not be an issue unless we reach the conclusion that new telegrapher positions were created at the blind sidings where telegraphers at nearby stations were sent to deliver train orders. Manual delivery of a train order is only one of the many acts required to be performed in the handling of a train order. As we construe the Agreement, this one act does not open a new telegrapher position, or establish a new station where a telegrapher is employed.

Nor do we believe that a violation of the scope rule occurred. The work in question was not transferred to another craft or class of employees; it was done by agreement-covered telegraphers. We are asked by the Organization to reach the conclusion that an employee holding a regular assignment is entitled to work his full eight hours at his own job location and cannot (without penalty) be sent a few miles from that location to perform needed work at another point where no telegrapher is employed. We can not so con-

clude. In this regard, we cite with approval Award 39 of Special Board of Adjustment No. 259 (Bailer) and Award 18 of Special Board of Adjustment No. 603 (Bailer). In said Award 18, the Board stated: "No agreement provision can be found which provides that such a telegrapher may not be required to deliver train order outside the immediate location of his station." We reach the same result in the present Claim, where two telegrapher employes during their regularly assigned hours traveled a few miles to deliver train orders to locations where no telegrapher was employed.

Dualization is not involved. The Record indicates that only on rare occasions was it necessary for telegrapher work to be performed at Schilling and Westfall.

The Organization's adroit argumentation in reference to the definition of a "shift" being construed to limit and confine an employe to working only at one location is respected, but we do not find it to be persuasive, particularly in a Claim such as the cases at hand where:

- (a) The work was not transferred to another craft,
- (b) The telegrapher went to a nearby location to perform some telegrapher work where a telegrapher was not employed,
- (c) The work was done during the telegrapher's regularly assigned hours,
- (d) The telegrapher commenced and finished his workday at the same job location,
- (e) The places where the telegraphers were sent were in reasonably close proximity to the respective job locations where nearly all of their work was performed, and
- (f) No rule of the Agreement prohibited the Carrier from requiring this particular work.

For the reasons set forth above, we reach the same conclusion we did in Award 13201 (Zack). Award 13201 is sufficiently analogous to deserve serious consideration, and we cite it with approval.

This Claim should be denied in its entirety.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.