

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
(Chicago, St. Paul, Minneapolis and Omaha District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway (Chicago, St. Paul, Minneapolis and Omaha District), that:

1. Carrier violated the terms of an Agreement between the parties when on December 29, 1962, January 5 and 12, 1963, it deprived Agent-Telegrapher E. D. Cork, Jim Falls, Wisconsin, of the right to perform the work of his position on the rest days thereof, and transferred same to employees (others) outside said Agreement.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate E. D. Cork at the rate of time and one-half with a minimum of two (2) hours for each date December 29, 1962, and January 5 and 12, 1963 at the rate of the position occupied.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Chicago, St. Paul, Minneapolis and Omaha Railway Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Organization or Employees, effective March 1, 1956, and as otherwise amended. For the record, the Chicago and North Western Railway Company, pursuant to an Order of the Interstate Commerce Commission now controls the operation of Carrier and has assumed the collective bargained Agreements referred to supra. This accounts for the fact that the Chicago and North Western Railway is made a party to this action. Copies of the effective Agreement are, by law, assumed to be on file with this Board, and are, by this reference, made a part hereof.

This dispute involves the transfer of work on the unassigned rest day, Saturday, of the regular occupant of the agent-telegrapher's position at Jim Falls, Wisconsin. The facts are not in dispute.

Jim Falls, Wisconsin is located on Carrier's Altoona-Cornell Branch, 24.1 rail miles from Altoona, Wisconsin. Altoona is the terminal for trains serving the Altoona-Cornell Branch.

OPINION OF BOARD: This dispute involves the transfer of work on a rest day, Saturday of the regular occupant of the Agent-Telegrapher's position at Jim Falls, Wisconsin. For years the regular occupant of this position performed all of the work in connection with the preparation of carload shipments for the Falls Dairy Company during the assigned hours of his work week as well as on the rest days. It is clear from a review of the evidence that the Claimant's predecessor performed the work in connection with the billing of carload shipments tendered by the Falls Dairy Company on the rest day of his position as well as during the work week, Monday through Friday. Claimant, after assuming his position and in accordance with the practice of the previous incumbent of the position, requested the Carrier's permission to work on the claim dates, Saturdays, which were his rest days. The work to be performed was the billing of carload traffic and other work incidental to the Falls Dairy Company. The Carrier denied each of the Claimant's requests, and assigned the work in question to the Agent at Altoona.

The Organization relies fundamentally on the Scope Rule and on the Unassigned Rest Day Rule, Rules 1 and 49 (m) respectively. They base their violation of the Scope Rule on the well established doctrine of this Board that where, as in the instant case, the Scope Rule is general in nature, not describing the work encompassed by it, and merely setting forth the class of positions covered by the Agreement, that it is right and proper to look to past practice to ascertain what work was covered by the Scope Rule at the time the Agreement was made effective. By way of argument, they point out that the work involved had, for a period of years, been performed by the regular occupant of the Agent-Telegrapher position on his rest day Saturday. Therefore, in deference to this past practice, the claims as submitted should be sustained.

They further rely on Rule 49 (m) of the Agreement, which provides:

"(m) Work on Unassigned Days.

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

In accordance with the provisions of the above cited rule, they contend that the work in question occurred on a day which was not a part of any assignment, and absent, as in this case, an available extra or unassigned employe not having 40 hours of work that week, it should have been given to the Claimant.

The facts are unassailably clear in this case. Saturday is without question the rest day of Claimant's position and his predecessor over a period of years did perform the work involved on his rest day. It was only after Claimant assumed the position that the work was transferred to Altoona.

The Carrier counters by contending that whereas it may have been past practice in this one particular position for the incumbent to be called on his day, this is not a sufficient demonstration of past practice to enable us to activate the "past practice" doctrine so well established by numerous awards of this Board. They aver that in order for the Organization to be successful in this claim, they must prove, that such practice has been system-wide and not merely an isolated instance. We agree with these contentions.

Carrier, in answer to the Organization's contention relative to Rule 49 (m), states that the work was part of the assignment at Altoona, that it has the right to transfer such work, that the work was ultimately done by another employe in the same craft and class as well as the same seniority district of the Claimant. We agree with these arguments. Further it bases its action in this case being in complete alignment with the principle enunciated in Award 10056 (Dugan). In that case, the claim was based on the allegation that the Carrier violated the agreement when it blanked the first trick-telegrapher agent-operator position on Sundays and holidays and delivered the work of handling messages and reports to the first trick operator at Allentown Yard. In denying the claim, the Board stated in part:

"On this same point the Carrier primarily relies on the reasoning of Award 6946 (and numerous awards following it) and Award 9119 where this Division held:

'The question to be decided by this Board is whether or not the Carrier may stagger the work which remains to be performed on an unassigned day and assign it to an employe at another location. This question of staggering work that remains to be performed on an unassigned day has been discussed in Award 6946. On the basis of the reasoning of that Award, the Carrier had the right to combine the remaining work of the third shift at Waterville Yard with the work at Tower "A" arising between 10:00 P. M. and 6:00 A. M. on Saturday night, as the telegraphers at Waterville Yard and Tower "A" are both of the same class and craft and both in the same seniority district and are carried on the same seniority roster, and the Towerman-Telegrapher at Tower "A" is qualified to perform the work of the Clerk Telegrapher at Waterville Yard.'

It would seem that if the Carrier can stagger work weeks on one facility under the 40-hour agreement so as to obviate the use of relief assignments (as numerous awards of this Division hold) that no valid reason exists why the work week cannot be staggered between nearby facilities provided the work is assigned to an operator of the same craft and class within the same seniority district."

We agree with and adopt the reasoning in Award 10056 (Dugan) and 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 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 31st day of October 1967.