

Award No. 16017
Docket No. TE-14908

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL SYSTEM
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (CCC&StL District), that:

1. Carrier violated the Agreement between the parties when on August 16, 1962, it abolished the third trick block operator-clerk position at Cairo, Illinois without abolishing the work and duties assigned the position and diverting such work to other employees to be performed who are not under the Telegraphers' Agreement.

2. Carrier shall now compensate Mr. H. C. Settlemoir, the regular assigned block operator-clerk, or his successor, for each day eight (8) hours per day five (5) days per week, Monday through Friday, at Cairo rate of \$2.5668 per hour, \$20.53 per day, and continue to pay him or his successor until the position is restored and violation is corrected.

3. Carrier shall also compensate the senior idle employee, extra in preference, 8 hours per day, 5 days per week, Monday through Friday, at the Cairo rate of \$2.5668 per hour, \$20.53 per day for work and duties diverted and assigned to clerk to be performed, an employee not under our Agreement, and continue to pay him until violation is corrected.

4. The right is reserved to examine the Carrier's personnel records to determine the senior idle employee, extra in preference, entitled to compensation for the days violation occurs.

EMPLOYEES' STATEMENT OF FACTS: By letter of September 8, 1962, claim was made for the violation of the Agreement when on August 16, 1962, the Carrier declared abolished the third trick block operator-clerk position at Cairo, Illinois, without abolishing the work and duties and it was requested that H. C. Settlemoir, the regular assigned block operator-clerk,

It is clear that in the letter of January 17, 1963, District Chairman McGowan did not accept the arguments presented by Rules Examiner Schoemaker and informed him that he would not accept his explanation of the claim.

ORT Exhibit 7 is Transportation Superintendent Foster's letter of March 13, where he completely ignores the fact that the Carrier has defaulted under the Time Limit Rule, and even claims that the Carrier has the right to determine that this claim was not valid because the claim was filed for the senior idle employe, extra in preference. Carrier then went on to argue that the Scope Rule did not cover the work that had been formerly performed by the third trick operator and now was being performed by other than telegraphers and Management had the right to remove the positions. By letter of March 28, District Chairman McGowan called attention again to the fact that the Carrier had failed to respond within sixty days' time limit provided by Article V and that the claim should be settled on the basis of the default of the Carrier. See ORT Exhibit 8.

It will be noted in ORT Exhibit 10 that General Manager Salter completely ignores the time limit violation, and contends that the claim should be considered from the date it was appealed by District Chairman McGowan on its merits under date of January 17 and declined on March 13 by Transportation Superintendent Foster. Claim is now properly before your Board for final adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute dated February 1, 1962, a copy of which is on file with your Board, and by this reference is made a part hereof.

Effective March 22, 1961, the Agent's position at Cairo, Illinois was abolished, and an Operator-Clerk position was established at this point, working 11:00 P.M. to 8 A.M., with one hour for lunch, Monday through Friday. At that time the agency work at this station was placed in a Centralized Agency Route (Illinois No. 10) under the supervision of the Service Center at Mt. Carmel, Illinois.

On or about August 16, 1962, the Cairo, Illinois yard limits were extended out to Karnak, Illinois, thereby permitting the Harrisburg-Cairo Turnaround Switch Run (only train operating in this territory, departing Harrisburg about 2:30 A.M. and departing Cairo about 6:30 A.M. on return trip) to depart Cairo on its return trip without clearance or train order. This eliminated the need for the third trick operator at Cairo and his job was abolished effective August 16, 1962. The small amount of clerical work he previously performed was turned over to the Assistant Agent-Operator assigned to Illinois Route No. 10 (Cairo to Vienna).

As a matter of information, attached as Carrier's Exhibit No. 1 is a rough sketch showing the territory involved and other pertinent information in connection with the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim was originally timely and properly filed with the Carrier in a letter dated September 8, 1962. Carrier's first writ-

ten response disallowing the claim is dated December 5, 1962; however, the record indicates, without evidence to the contrary, that the December 5th letter was not served on Employees until January 17, 1963. In a letter dated January 17, 1963, Employees carried the Claim to the next higher step on the merits, making no claim based on Carrier's failure timely to reply under the Time Limit Rule. Carrier replied primarily on the merits in a letter dated March 13, 1963; on April 26, 1963, Employees carried the matter to the next step, this time making no mention of the merits of the case, but relying solely on the alleged violation of the Time Limit Rule.

In a letter dated June 12, 1963, Carrier declined the request that the Claim be paid on the basis of a Time Limit Rule violation, and in a letter dated July 17, 1963, Employees replied to the June 12th decision, declining to accept it and informing Carrier that the Claim would be presented to this Board as a Time Limit Rule violation by Carrier.

From the foregoing it is clear, following decisions regarding Time Limit Rule cases by the National Dispute Committee, and their subsequent application by us, that the Claim should be allowed as presented up to January 17, 1963, the date of Carrier's belated disallowance of it; and, further, that the Claim was not brought to us on its merits, the "merits" question not having been pressed by the Employees during the last steps of processing the matter before reference to us.

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 failed to comply with the requirements of the Time Limit Rule by failing to disallow the Claim in writing until January 17, 1963;

That Employees did not present the Claim to us for consideration on its merits.

AWARD

Claim allowed up to January 17, 1963; Claim denied from and including January 17, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December 1967.

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