Award No. 16349
Docket No. TE-15382

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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

STATEMENT OF CLAIM:

1. Carrier violated the agreement when it allowed, or permitted an employe not covered by the Telegraphers' Agreement, to copy a clearance card at Soldier Summit, Utah, on Wednesday, September 23, 1964.

2. Carrier shall now compensate the senior idle extra man one day's pay (8 hours); however, if no extra man available, Carrier shall compensate Telegrapher C. R. Riddle, the regularly assigned relief telegrapher at Helper, Utah, who was off on rest day at the time of this violation, for one day's pay (8 hours).

CARRIER'S STATEMENT OF FACTS: On September 23, 1964, after departure Helper, Utah, it became necessary for operating reasons to run helper engine 5561 through to Thistle, Utah, instead of returning to Helper, Utah, from Soldier Summit after helping westward train. Normally, helper engines after helping westbound return light from Soldier Summit to Helper and helper engines helping eastward trains return light to Thistle from Soldier Summit. Soldier Summit is a blind siding 25 miles west of and under the jurisdiction of the agency at Helper, Utah. Dispatcher issued a clearance card direct to engineer of engine 5561 granting authority to run extra from Soldier Summit to Thistle. No emergency existed under the terms of Rule 21 (C)-2; therefore, Carrier was in violation of the Mediation Agreement Case A-757 of May 13, 1940, carried as Rule 21 (C) in the current Agreement, which reads as follows:

"(C) Mediation Agreement Case A-757, May 13, 1940:

1. Train and engine service employes will not be required or permitted to transmit or receive train orders, clearances, written messages, or to block or report trains by telephone or telegraph, except in emergency.

It is further understood and agreed that,

The record shows that the Superintendent made no rebuttal reply to the District Chairman's contention as set out above.

The unadjusted dispute was, thereafter, appealed to Director of Personnel E. B. Herdman by the General Chairman in a letter dated December 2, 1964, copy attached as ORT Exhibit 8.

On December 9, 1964, Mr. Herdman replied to the General Chairman's letter of appeal. Copy of said letter is attached as ORT Exhibit 9. It may be noted with respect to this letter that for the first time in these proceedings the Carrier precisely sets forth its position. It agrees that the Statement of Facts is proper. It further agrees that Item 1 of the Statement of Claim has conceded that no emergency existed. However, here the agreement ends. Carrier states that Item 2 of the Statement of Claim is in error as to the proper claimant and amount of reparation claimed. And, thereafter, states the question at issue to be, namely, "The dispute in this case and the proper claimant and amount of pay due account nonperformance of work of copying a clearance card, under the provisions of Rule 21(C)1, at blind siding Soldier Summit, assigned to station at Helper, Utah, at 1:09 P.M., September 23, 1964." The Carrier taking the position that if someone should have been called to perform the work in dispute, that someone would have been the agent at Helper who was on duty at the time of the occurrence and should have been called. However, since he was on duty "and could not be spared to be sent to Soldier Summit to copy this clearance card", etc., then the occupant of the second shift, namely, Mrs. C. M. Walker, could have been called to travel the twenty-five (25) miles Helper to Soldier Summit to perform the work in dispute. And that for such call she would have been paid under the provisions of Rule 8 (Call Rule).

In rebuttal reply to Carrier's contention, the General Chairman by letter dated December 21, 1964 (copy attached as ORT Exhibit 10), among other things, stated:

> "We do not agree that Agent D. K. Downey was the employe to be given preference for this work as Agent Downey was working at the time the clearance card was copied by the engineer. We do not agree that Mrs. Walker was an employe to be given preference for this work, as she was working that day from 4:00 P. M. to 12:00 Midnight. Rule 8 only applies to the station at which the employe is assigned. It does not apply to extra relief or emergency work at other points or stations. See Rules 9, 10 and 20 (G)."

On the basis of the foregoing statement of principle, the General Chairman rejected the Carrier's offer of a three hour call for Operator C. M. Walker as being the proper payment in this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. On September 23, 1964, after departure from Helper, Utah, it became necessary to run a helper engine through to Thistle, Utah, instead of returning to Helper, Utah, from Summit, Utah, where the engine assisted a westward bound train. Under normal circumstances, helper engines after rendering assistance to westbound trains, return light from Soldier Summit to Helper and helper engines rendering assistance to eastward trains, return light to

Thistle from Soldier Summit. Soldier Summit is a blind siding 25 miles west of Helper, Utah. The Dispatcher issued a clearance card directly to the helper engine granting authority to run extra from Soldier Summit to Thistle.

The Organization has rightfully alleged that Carrier thereby has violated Mediation Agreement Case A-757 of May 13, 1940, incorporated in the Agreement as Rule 21(c). This Rule provides that train and engine service employes cannot transmit or receive train orders, clearances, etc., except in an emergency. An emergency is thereinafter defined and the factual situation neither warrants nor in fact is it alleged by the Carrier, that an emergency existed. The Carrier readily admits the violation, but contends that the amount of money claimed is erroneous, and that the Claimant, "the senior idle extra man" or "if no extra man available", then Telegrapher C. R. Riddle, the regularly assigned relief telegrapher at Helper, Utah, either, or, are improper Claimants.

We will address ourselves to the latter proposition, namely, that the Organization has submitted this claim on behalf of improper Claimants. Incidently, the Carrier in this case is the petitioning party, and, as such, contends that the Organization stands in violation of the National Time Limit Rule, incorporated into the Agreement as Rule 24, Section II 1(a). This Rule reads, in pertinent part, as follows:

"SECTION II.

1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf **of the employe** involved, etc."

(Emphasis ours.)

In furtherance of their position, they aver that the plain reading of the above cited rule precludes the presentation of a claim on behalf of an employe who is not involved. In contradistinction to this argument, the Organization maintains that they may name any claimant coming under the Telegraphers' Agreement when Carrier has violated the terms of the contract. We do not agree with this argument because in order for an individual claimant to be awarded compensation for a breach of contract, he must demonstrate wherein he has been adversely affected by such breach. Disregarding this for the moment, Carrier alleges that the employe involved in this case is the regular employe "covered by Rule 6(m), and where there is more than one employe, then the senior employe in the office assigned at that station that day, as covered by Rule 8, the "call" rule. Rule 6(m) reads as follows:

"(m) Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not 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."

Carrier argues that under TCU President Leighty's interpretation of the above cited rule "involving telegrapher's work at a blind siding, the regular employe must be an employe at the station to which the Carrier has

unilaterally assigned such blind siding by notice." They further contend that, pursuant to Awards 15 and 16 of Special Board of Adjust 525, by interpretation of the parties involved, the "regular employe" was entitled to the call when the clearance card was copied at Soldier Summit.

They then refer us to the rules to determine "which of the four regular employes at Helper, Utah, at 1:00 P. M., September 23, 1964 would be entitled to this call." They contend that the same situation prevailed with respect to the on-duty operator at Helper, Utah, as occurred in Award 15, Special Board of Adjustment 525. In both cases, Carrier was unable to spare the on-duty operator for the job. They further allege that Rule 8, the Call Rule, provides that the senior employe in the office involved shall be given the preference. In the instant case, the senior employe was Downey, who was on duty at the time and was available, but because of the time element was not used. They refer us to Award 16, Special Board of Adjustment 525, when an on-duty telegrapher was used to deliver a train order from Clearfield, Utah, to a blind siding at Ray, Utah. They again refer us to that award to show that under Carrier policy it allows expenses in such cases.

Carrier arguendo states that if Claimant Riddle "had been assigned to work at Helper, Utah, and had he been considered a regular employe at Helper, Utah, on September 23, 1964, and was the senior man available, he would have been called had the Carrier used a telegrapher to perform this work." They contend that a relief employe, not assigned to work at Helper, Utah, on the date in question, cannot be held to be the regular employe, and that Riddle was the only regular assigned relief employe at Helper, Utah, with the following hours:

Sunday – Relieves 1st telegrapher	—	8:00 AM– 4:00 PM
Monday – Relieves 2nd telegrapher	—	4:00 PM–12:00 AM
Tuesday – Relieves 2nd telegrapher	—	4:00 PM–12:00 AM
Wednesday – Rest Day		
Thursday – Rest Day		
Friday – Relieves 3rd telegrapher	—	12:01 AM– 8:00 AM
Saturday – Relieves 3rd telegrapher	—	12:01 AM– 8:00 AM

Thus, so the Carrier's argument goes, Riddle was not the regularly assigned relief employe for the second telegrapher on Wednesday, September 23, 1964, the day of the claim. His position was bulletined as a relief telegrapher Friday through Tuesday, inclusive, with no assignment on Wednesday. Carrier states categorically that the General Chairman "verbally handled this same matter with Carrier's highest officer to secure correction of a practice when dispatcher had been calling the regular assigned telegrapher at Canon City, Colorado, outside of assigned hours on his rest days when relieved by an assigned relief operator on those days; thereafter, the relief operator assigned at Canon City on those rest days was called for any overtime under the provisions of Rule 8." Carrier contends this is the practice on the property.

Carrier propounds the thesis that Claimant Riddle is not "the employe involved", as required by Rule 24, Section II 1.(a) and in support of its ar-

gument contends that this Board has held many times that "the expression 'employe involved' means 'employe adversely affected by an alleged violation of a collective bargaining agreement.'" They conclude that Claimant Riddle is not involved, hence, cannot be adversely affected.

The Carrier's basic position that the senior telegrapher assigned at Helper, Utah, if available, is the proper Claimant, and if unavailable, then other employes in seniority order who are available at Helper, Utah, are the proper Claimants, is denied by the Organization. They also deny that Rule 8, the Call Rule, is applicable to the instant set of circumstances.

The Organization affirmatively states that it has the statutory right as the collective bargaining agent to name the Claimant, and that the amount of pay due as damages, for a violation of the Agreement, is a day's pay at the pro rata rate of the position at Soldier Summit in accordance with the applicable rules. They further aver that Carrier "is laboring under the misapprehension that its unilateral assignment of certain residual work for accounting purposes only, formerly performed by the occupants of the abolished positions at Soldier Summit, Utah, brings this twenty-five (25) mile distant station location within the station limits of Helper.

The Organization further contends that "the assignment of a blind siding to an open station is for accounting purposes only, that such assignment does not mean that the agent at the open station must travel to and perform work at the non-reporting station, and that consequently, the mere assigning of a non-agency station to an open station does not extend the station limits of the open station to cover the station limits of the closed station except for accounting purposes. And where work arises at a closed station which has been assigned to an open station, the agent at the latter does not and cannot be used off his assignment to travel to and perform work at the non-agency station." They aver that "for the Carrier to contend that the unilateral assignment of the Soldier Summit Agency to Helper, Utah, brings the station within the jurisdiction of Helper, Utah for the purpose of applying the Call Rule, cannot be justified under any reasonable application of the Rule."

They espouse the principle that the Time Limit Rule (Rule 24, Section II) of the Agreement on the question raised by the Carrier as to the proper Claimant in this case has long since been decided by this Board; the controlling principle being that Claimants need not be named as long as they are readily identifiable. They, therefore, conclude that they are in full compliance with the Time Limit Rule by having named the senior idle extra employe or in his absence, Claimant Riddle, the regular assigned relief employe, who on the day in question was on his rest day.

After careful consideration of the arguments propounded by both parties regarding the question of whether the claim has been submitted on behalf of the proper Claimants, we have made several conclusions. We agree with the Carrier that work which arises at a blind siding may unilaterally be assigned to an open agency, as was done in this case. We, however, disagree with Carrier's contention that Rule 6 M is applicable to the instant case. If we by syllogistic reasoning agree that the work at the blind siding was assigned to the open agency, then we must conclude that it was work within the contemplation of the assignment of the regular employe at that station. That being accepted as the major premise, we then proceed to the minor premise. Rule 6(M) reads:

"Work on Unassigned Days. Where work is required to be performed on a day **which is not 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." (Emphasis ours.)

We, therefore, conclude that the work in question, in support of Carrier's position as outlined in the major premise, was part of the assignment of the open station. Hence Rule 6(M) is inapplicable. Since the "regular employe", because of the time element involved, was unable to perform the work, and since the essence of the work, in deference to the distance involved, was in the nature of a call, we conclude that the senior idle extra man or Claimant Riddle, the regularly assigned relief telegrapher, were the proper Claimants.

Insofar as compensation for the breach of the contract is concerned, there is no provision in the Agreement establishing a day's pay as a proper payment. The nature of the work itself, that is, the copying of a clearance card some twenty-five miles distance, is the type of situation envisioned by the provisions of the Call Rule, is applicable insofar as compensation is concerned. The claim is sustained in accord with this opinion.

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 violated by the Carrier.

AWARD

Claim sustained per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.

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