Award No. 16374
Docket No. TE-15626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Pennsylvania Railroad that Carrier violated the Telegraphers' Agreement when on May 6, 13, 27, June 3, 10, 17, 24 and July 1, 1962, it blanked the work at Rincon Junction, which over a period of many years was performed by the Agent at Worthington, Indiana and requested the work of such position to be performed by the conductor on IS 21-22, an employe not covered by the Telegraphers' Agreement.

D. W. Harlow, regular assigned Agent at Worthington, Indiana was available, and is entitled to be compensated four (4) hours' pay at the time and one-half rate. Regulation Scope, 4-J-1 and 5-G-1 (i).

EMPLOYES' STATEMENT OF FACTS: Claimant was regularly assigned to the position of Agent at Worthington, Indiana, five days per week, Monday through Friday, with assigned rest days of Saturday and Sunday. His position is covered by the current Agreement between the parties which became effective since September 1, 1949, superseding previous Agreement of May 16, 1943. The Scope thereof provides:

> "The provisions set forth in this Agreement shall constitute separate Agreements between The Pennsylvania Railroad Company and its employes, and the Baltimore and Eastern Railroad Company and its employes, of the Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes classified herein.

The Pennsylvania Railroad Company	Baltimore & Eastern Railroad Company
Group 1 – Station Agents and Assistant Agents Classified herein.	Station Agents and Assistant Agents Classified herein.

The claim was then handled in accordance with the provisions of Article V of the National Agreement of August 21, 1954, up to and including the level of Superintendent, Personnel.

Following the Superintendent, Personnel's denial of the claim, the District Chairman, TCU, requested that a Joint Submission be prepared for progression of the case to the General Chairman TCU and the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. A copy of the Joint Submission is attached as Exhibit A.

By letter dated June 19, 1964, a copy of which is attached as Exhibit B, the Manager, Labor Relations denied the claim.

Thus, so far as the Carrier is able to anticipate the basis of the Employes' claim, the questions to be decided by your Board are whether the action of the Conductor in making out form CT-362 and listing on that form only the number and initial of only those cars destined for Campbells which were made part of his train, was in violation of the Scope Rule of the applicable Agreement, and whether Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: It is undeniable that the conductor of Train IS-21 was subsequent to 15 April, 1962, doing some of the work that Claimant, operator of a one-man agency at Worthington, Indiana, had for many years done on Sunday, his rest day. He prepared Carrier's Form CT-362 in duplicate and left a copy thereof for Claimant. Whether said conductor was actually making a physical inspection of the tracks at the Rincon Junction Interchange or whether some other member of the train crew was making same is immaterial. The fact is that others were doing at least a portion of the work previously done by Claimant, and that it was that portion which had for many previous years required Claimant to work overtime.

The Organization relies heavily upon the "Unassigned Day Rule", Regulation 5-G-1 (i) of the Agreement, which reads as follows:

"* * * * *

(i) Where work is required by the Company 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.** (Emphasis ours.)

* * * * *"

In the instant matter, Claimant was the duly and regularly assigned operator of the one-man agency at the Worthington Station. As hereinbefore noted, he had for many years prior to 15 April, 1962, done the unassigned work at the Rincon Junction Interchange on his Sunday rest day. Obviously, the conductor of Train IS-21 was neither "an available extra" or an "unassigned employe", but Claimant was the "regular employe."

We hold that Award 14071 (Stark), urged upon us by the Organization, is controlling authority for sustaining this claim. It involved the same parties, and was a similar situation. Therefore, the claim will be sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1968.

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