

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when on February 22, 1963 (holiday), it declared the position of first shift telegrapher-clerk at Fair Ground, Iowa, to be blanked and required or permitted employes not covered by the Agreement to perform work of said position.

2. Carrier shall be required to compensate the incumbent of the first shift position of telegrapher-clerk at Fair Ground, L. S. Hickie, in the amount of a day's pay of eight (8) hours at the time and one-half rate for February 22, 1963 (holiday).

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Fair Ground, Iowa (located on the western edge of Dubuque, Iowa) is a station on the Eastern Division, Chicago District, of the Carrier's lines, 71.6 miles east of Oelwein, Iowa, the western terminus of the district, and 174.2 miles west of Chicago, the eastern terminus. Addendum No. 1 of the Agreement lists two telegrapher-clerk positions at Fair Ground. The first shift hours of assignment are 5:00 A. M. to 1:00 P. M., daily, and the second shift 4:00 P. M. to Midnight, daily. L. S. Hickie is regularly assigned to the first shift (rest days Sunday and Monday) and E. A. Otting is regularly assigned to the second shift (rest days Tuesday and Wednesday). Rest day relief is by a regular relief employe as a part of his regular assignment relieving the four days at Fair Ground and one day at Oelwein, Iowa each week. E. T. Healey is assigned to the relief position. Carrier shows in its time table that the first shift is open except on holidays.

Prior to about July 1, 1953, Carrier maintained round-the-clock telegrapher positions at Fair Ground. Since the one shift was discontinued, Carrier has, on occasion, used persons not covered by the Agreement to perform work of the telegrapher-clerks at Fair Ground when such work was or is required out-

Your time slip No. 17 dated February 22, 1963, claiming two hour call at time and one-half rate account other employees allegedly doing operator's work, is not being allowed.

The work, subject of this dispute, (handling switch lists, IBM cards, etc.) is that which is performed by employees of various crafts. It is not worked reserved exclusively for telegraphers, as indicated by your time slip, and claim is respectfully declined for lack of support, under the rules, agreements and practices in effect on the property.

/s/ R. E. Hagelberg
Chief Dispatcher"

Claim appealed to Superintendent by General Chairman (Carrier's Exhibit A) is for eight hours at time and one-half. Subsequent pertinent correspondence exchanged by the parties is attached as Carrier's Exhibits B through M.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves an assertion by the Employees that Carrier, after blanking the first shift position at Fair Ground, Iowa, on the holiday February 22, 1963, required or permitted employees outside the coverage of the Telegraphers' Agreement to perform work of the position.

The occupant of the position filed a claim for a call payment of two hours, contending that "other employees" had deprived him of work by "marking up a switch list of 12 cars set out by No. 90-2/21 — for a Switch Engine to Switch with, also working up IBM cards for same set out."

This claim was declined, the Carrier contending that such work is not reserved exclusively to telegraphers. On appeal the claim was changed both as to allegation of facts and amount of damages claimed. Carrier objected to the change, and in subsequent handling challenged the Employees' version of the facts, as well as contending that the occurrences alleged to have taken place did not constitute violation of the agreement. The Employees responded with mere assertions but no evidence to support those assertions.

During the past several years this Board has considered a number of disputes between these same parties, some of which have involved this same claimant, location, and similar subject matter. See, for example, Awards 10536, 11433, 11486, 13313, 14968, 15060, 15583 and 15584. In several of these awards we have noted failure of the Employees to meet their burden of proof.

In Award 15060 we went to some lengths explaining just what this burden is and how failure to meet it affects a claim.

Here again the Employees have relied on assertions without proof, leaving the Board no alternative to denying the claim.

Under such circumstances there is no need to consider other aspects of the dispute, although we do think it is appropriate to observe that no consideration was given to arguments and data injected into the dispute by both parties after completion of handling on the property.

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 no proof of agreement violation is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.