



Award Number 17332

Docket Number TE-15799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOO LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Soo Line Railroad that:

1. Carrier violated the terms of an Agreement between the parties hereto when it failed and refused to fill the agent-operator's position at Custer, Wisconsin with an employee from the agent's and operator's roster.
2. Carrier shall, because of the violation set out above, compensate the following named employees, idle on their rest days, for eight (8) hours at the Custer, Wisconsin rate of pay in accordance with the following:

K. L. Worth—May 1, 7, 8, 14, 15, 21, 22, 28, 29, June 4, 5, 11, 12, 18, 19, 25, 26, July 2, 3, 9, 10, 16, 17, 23, 24, 30, 31, August 6, 7, 13 and 14, 1964.

L. E. Turner—May 4, 11, 12, 18, 25, June 1, 8, 15, 22, 29, July 6, 13, 20, August 3 and 10, 1964.

J. F. Knoke—May 5, 6, 13, 19, 20, 26, 27, June 2, 3, 9, 10, 16, 17, 23, 24, 30, July 1, 7, 8, 14, 15, 21, 22, 28, 29, August 4, 5, 11 and 12, 1964.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective July 1, 1956 and as amended. Copies of said Agreement are available to your Board, and are, by this reference, made a part hereof.

At Page 57 of said Agreement, under Rule 30—Rates of Pay, is listed the position involved in this dispute. For ready reference the listing reads:

"Station—Custer, Wisconsin, Position—Agent & Operator, Hourly Rate—\$1.91"

The listing of the above position in the Wage Scale of the parties' Agreement establishes, among other things, that:

therefore, furloughed. He immediately sought employment as a switchman but failed to pass the physical examination. Following the Brotherhood's complaint to the Public Service Commission, Mr. Dorshak was hired to fill the agent's position at Custer.

Mr. John P. Hedquist was employed as a vacation relief clerk on the Eastern Division from July 1, 1963, to August 30, 1963. He acquired no rights by reason of this service and his record was closed effective August 30, 1963. On July 13, 1964, Mr. Hedquist was employed to relieve Mr. Dorshak as agent at Custer. He was displaced by Mr. Dorshak on July 20, but again assumed the agency position on July 27, 1964. Mr. Hedquist resigned from the service of the Carrier at the close of business on Friday, August 28, 1964.

On August 31, 1964, one Robert D. Hart, who had no prior service with the Carrier was employed as agent at Custer, Wisconsin. Mr. Hart failed to pass his physical examination and when Mr. Partlow became available, Mr. Hart was removed from the agent's position.

On September 18, 1964, the Carrier filed an application with the Public Service Commission of Wisconsin for authority to withdraw agency and caretaker service and to remove the depot building at Custer. Order granting this authority was issued January 21, 1965.

Copies of schedule agreement effective July 1, 1956, between the parties to this dispute and supplements thereto are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: Custer, Wisconsin was a one man station manned around the calendar prior to 1954. On July 1 of that year the Public Service Commission of Wisconsin approved Carrier's application to close the agency from November through April and maintain caretaker service from May through October. Thereafter, until 1963, the station was so handled. During 1963 the agency remained closed throughout the year. The instant complaints arose from Carrier's handling of the station during 1964.

From May 1 through June 7 the position was blanked by Carrier. This is the basis for the first segment of this two-part claim.

It is abundantly clear that absent a specific rule to the contrary, Carrier has the right to blank a position. Award 15046 (Devine), 12358 (Dorsey). This right extends to one-man stations such as Custer.

However, this does not mean that Carrier thereupon has an unrestricted right to re-assign the work formerly handled by the agent. The work done by an agent at a one-man station belongs to the agent. Award 4392 (Carter). When the station is closed or the position blanked, the work remains telegrapher's work and must remain within the craft. Award 16951.

Proceeding to the record on the property in order to discover what happened to the agent's work at Custer during the period in question we find in letter of October 29, 1964 from General Chairman Feit to Director of Personnel Borchert the uncontradicted claim that the "work, during the blanking period, was performed by employees at Stevens Point, Wisconsin who were not working under the agreement . . ." Based upon this unauthorized transfer of work, we sustain the claim on the dates asserted from May 1 through June 5.

The second part of this claim is concerned with the period from June 8 through August 14, during which time the agent's position was filled. Actually, the claim boils down to a complaint against the use of Mr. Jerome J. Dorshak in the position from June 8 through July 10 and again from July 20 through July 24.

The record tells us that Mr. Dorshak, during the two periods of time indicated above, was a furloughed clerk. There were no extra or furloughed telegraphers available. There was no prohibition against the hiring of a furloughed clerk as a telegrapher. This was done on June 8, and Dorshak's application for membership in the ORT was made and processing of the same commenced. It had not been completed when he was laid off on July 10. Again on July 20 the process was repeated. (See letter of July 28, 1964, General Chairman Feit to Director of Personnel Anderson). The principle here is the same as that involved in a converse case where we held that Carrier had the right to employ a furloughed telegrapher to fill a clerk's position where no extra or furloughed clerks were available. Award 10371 (McDermott).

Employees herein make the inference that Carrier was manipulating its assignments, shuttling Dorshak between crafts; however, in the absence of any probative showing that such was the case, we will impute good faith to Carrier in its handling of the problem.

The second part of the claim must fail for want of merit.

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

From May 1, 1964 through June 5, 1964, Carrier violated the Agreement in blanking the position at Custer and giving the work to employees at Stevens Point who were not covered by the Telegraphers' Agreement.

A W A R D

Claim sustained to the extent indicated in our opinion; otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.