

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John H. Dorsey, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION DIVISION, BRAC****THE KANSAS CITY SOUTHERN RAILWAY COMPANY
LOUISIANA & ARKANSAS RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Kansas City Southern Railway Company (L&A), that:

1. Carrier violated the Telegraphers' Agreement when it blanked the relay-telegrapher-wire chief position in "CD" Office, General Offices Shreveport, Louisiana, occupied by Telegrapher, Mr. F. A. Moore, and did not blank the work from this position.

2. Carrier shall compensate Mr. F. A. Moore for eight hours pay at the penalty rate, which is the difference between the 8 hours pro-rata rate allowed him due to blanking his job and the 2½ times rate that he would have received had he worked his assignment performing the work that was allotted to others.

EMPLOYEES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

An Agreement between the parties effective January 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented; progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals; and has been declined. The Employee, therefore, appeal to your Honorable Board for adjudication.

This claim grew out of Carrier's action in blanking Claimant's position on a holiday, Tuesday, July 4, 1967, and assigning work regularly assigned to his position to employees in the same craft in another office in the same terminal.

(b) ISSUE

Blanking a position on an unassigned day (a holiday) and assigning work regularly performed by the incumbent of the position, to employees in the same craft in another office.

Claim for an additional eight hours' pay at the time and one-half rate was presented on behalf of Moore by General Chairman C. A. Lewis, Jr., in letter dated August 18, 1967 (copy attached as Carrier's Exhibit 1), reading in part:

"STATEMENT OF FACTS: The Carrier on or about June 28, 1967 advised Mr. F. A. Moore not to fill his assignment in 'CD' Office, Shreveport, La., on July 4, 1967 due to legal holiday. The Carrier thus blanked this position and did not, in fact, blank the work allotted this position. The following messages were mailed to the Deramus Yard Office operator, C. A. Lewis, Jr. for transmission to the stations shown in each instance. This is work usually performed by the 'CD' operator, and in this particular instance, Mr. F. A. Moore. We do not dispute the Carriers' right to blank positions on Holidays, however, we most assuredly do dispute their right to blank these positions without abolishing all work connected therewith. Rule 8-7 and 8-8-n. are the governing Holiday rules here. While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board." (Emphasis ours.)

In the instant case five messages were messengered to SY telegrapher C. A. Lewis, Jr., and transmitted. The Employees contend that these messages should have been transmitted by Claimant Moore. They further say that a position cannot be blanked on a holiday "without abolishing all work connected therewith." Finally, the Employees state:

"While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board."

Thus the issue to be resolved by the Division in this case is:

In the absence of a specific prohibition in the effective agreement, must the Carrier abolish all work of a position in order to blank said position on a holiday?

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as the one shift one Telegrapher-Clerk in "CD" office, Shreveport, Louisiana. His regular assigned workweek was Saturday through Wednesday; hours 6:30 A. M. to 2:30 P. M. His office was adjacent to that of the Chief Dispatcher in Carrier's office building which was alongside Deramus Yard.

Telegraphers were also employed in another office—"SY"—in Deramus Yard, around the clock, which across the tracks was about one mile from the office building in which "CD" was housed; by roads passable for automobile, about three miles distant.

Claimant was given due notice that his position would be blanked on the July 4, 1967 Holiday.

On August 18, 1967, Telegraphers filed a Claim in which, *inter alia*, it averred:

"The Carrier on or about June 28, 1967 advised Mr. F. A. Moore (Claimant) not to fill his assignment in 'CD' Office, Shreveport, La., on July 4, 1967 due to legal holiday. The Carrier thus blanked this position and did not, in fact, blank the work allotted this position. The following messages were mailed to the Deramus Yard Office Operator, C A. Lewis, Jr. for transmission to the stations shown in each instance. This is work usually performed by the 'CD' operator, and in this particular instance, Mr. F. A. Moore. We do not dispute the Carriers' right to blank positions on Holidays, however, we most assuredly do dispute their right to blank these positions without abolishing all work connected therewith. Rule 8-7 and 8-8-n. are the governing Holiday rules here. While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board." (Emphasis ours.)

and, further, stated its position:

"It is the position of the employees that the Carrier may blank any position on any holiday, provided, that it also blanks the work that is done by the occupant of that position.

We have not only alleged here that work was done by employees other than the occupant of the blanked position, we have proved it by providing the communications sent and even further, with the service marks bearing out our claim.

For the reasons above, the employees request that the claim of 8 hours at the penalty rate be allowed Mr. Moore."

From a reading of the record as a whole the logic of Telegraphers' case is:

1. Run Messages — instructions from the Chief Dispatcher to personnel in various terminals instructing them as to trains to be operated — was communications work "exclusively" (in some communications relative to the Claim, Telegraphers used the word "usually" instead of "exclusively") performed by Claimant during his tour of duty and, therefore, was work exclusively reserved to the Telegrapher-Clerk position at "CD";

2. On July 4, 1967, a Tuesday — a work day within Claimant's workweek regular assignment — five Run Messages were messengered from the Chief Dispatcher's Office to "SY" office to be transmitted by telegrapher on duty at that location during hours within a regularly assigned work day of Claimant's work week;

3. Telegraphers admit that the transmission of the Run Messages by telegraphers at "SY" did not violate the Scope Rule:

4. Citing ARTICLE 8, Compensation, Rules 8-7(a), Holidays; 8-7(m) Work on Unassigned Days; and, 8-7(n), Holiday Work; and 8-8(m) Work on Unassigned Days; and, 8-8(n) Holiday Work, Telegraphers reason that: (1) the work of transmitting Run Messages from the Chief Dispatcher at Shreveport was work "exclusively" reserved to the occupant of the "CD" position at that location and; (2) the transmission of the five Run Messages by telegraphers at "SY" on

July 4, 1967, referred to in (2), above, was in violation of the afore cited provisions of the Agreement; and, therefore Claimant had the contractual right to work his position on the Holiday to perform the work "exclusively" or "usually" performed by the occupant of his position during its regularly assigned hours; and, Claimant, therefore, is contractually entitled to 8 hours at time and one-half in addition to the 8 hours pay at pro rata rate for the holiday; and

5. "* * * when work belonging to the position of telegrapher CD was, on an unassigned day, performed by another regular employe, the Agreement was thereby breached." (Emphasis ours.)

It is Carrier's position that the averments of Agreement violations are not supported by the Rules or practice on the property and that the Claim should be denied. It admits that five Run Messages were transmitted by telegraphers at "SY" on July 4, 1967. It denies that in practice the transmission of such messages has been the exclusive work of the "CD" telegrapher.

The issue before us is whether under the Rules pertaining to Holidays Carrier may blank a position on a Holiday unless it blanks, on such a day, all the work "usually" performed by the occupant of the position.

In considering this issue we have looked to numerous awards concerning rules applying to work on holidays. These awards indicate that when work required on a holiday is exclusively assigned to the position affected, or the position is filled, the regular incumbent has a prior right to be used. But when a position is not filled and it is not shown that the work required is exclusively assigned to the position the regular incumbent has no such prior right. Awards 7134, 7137, 8198, 10602, 12189, 17428, 17842.

The Employes, in the record before us, have not proved that the only work required, the handling of five Run Messages, is exclusively assigned to the Claimant's position. The claim, therefore, will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.