

Award No. 18253
Docket No. TE-18584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railroad, that:

1. Carrier violated the Agreement between the parties when on August 26, 1968, it failed to use an employe holding seniority on the Cloverleaf seniority district to man the first shift Telegrapher position in "GO" Office, St. Louis, Missouri, and, instead, permitted employes holding no rights to the position to absorb the work on that date.

2. Carrier shall, as a result, compensate K. V. Webster, first shift Telegrapher, "GO" Office, St. Louis, Missouri, eight (8) hours' pay at time and one-half rate, which he would have earned had he been used. [Carrier Docket: 30-24-725 - BU-13877-18]

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties effective January 1, 1959, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Originally entered into by the New York, Chicago and St. Louis Railroad and its telegrapher employes on the Nickel Plate, Lake Erie and Western, and Clover Leaf Districts, the Carrier merged with the Norfolk and Western Railway, and the Organization became the T-C Division of the Brotherhood of Railway and Airline Clerks. The effectiveness of the Agreement has been maintained throughout.

Claim was timely presented, progressed, including conference with highest officer designated by Carrier to receive appeals, and has remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

On August 31, 1968, the employees filed a claim with Mr. G. P. Hill, Superintendent, St. Louis Terminal, copy of which is attached as Carrier's Exhibit B, claiming eight (8) hours' pay at punitive rate, under the Agreement of September 29, 1967 (Carrier's Exhibit A), Holiday Rules and "other related rules of the Agreement."

Subsequent handling on the Carrier's property is shown by the following letters which are reproduced as Carrier's Exhibits:

CARRIER'S EXHIBIT C - September 9, 1968 - Letter - Superintendent to Regional Engineer Signals and Communications.

CARRIER'S EXHIBIT D - September 12, 1968 - Denial - Regional Engineer Signals and Communications to General Chairman.

CARRIER'S EXHIBIT E - September 17, 1968 - Appeal - General Chairman to Manager Labor Relations.

CARRIER'S EXHIBIT F - September 20, 1968 - Acknowledgment - Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT G - November 14, 1968 - Denial - Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT H - March 21, 1969 - Confirmation of conference Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT I - June 26, 1969 - Confirmation of conference Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT J - August 21, 1969 - Confirmation of conference Manager Labor Relations to General Chairman. Previous denial affirmed, time limit extended to December 31, 1969 for further handling by employees.

CARRIER'S EXHIBIT K - September 5, 1969 - Denial not accepted General Chairman to Manager Labor Relations.

(Exhibits not reproduced.)

OPINION OF BOARD: There is in effect an Implementing Agreement between the parties dated September 29, 1967, reading, in part:

"IMPLEMENTING AGREEMENT"

In connection with the consolidation of the work formerly performed by former Nickel Plate telegraphers in the former NKP Traffic Department's office in the Cotton Belt Building at St. Louis, Missouri, with the work formerly performed by former Wabash telegraphers in the Carrier's 'GO' Office in the Railway Exchange Building, St. Louis, Missouri, it is agreed:

1. Employees on former NKP's Cloverleaf District telegraphers' seniority roster will be entitled to man one (1) regular five (5) day per week first shift 'telegrapher' assignment in

Carrier's 'GO' Office, St. Louis, Missouri, the assignment to be designated by the management; except that should the force in 'GO' Office be reduced to one assignment, employees on former Wabash rosters will be entitled to that one assignment.

2. The work formerly performed by the telegraphers in former NKP's telegraph office in the Cotton Belt Building, St. Louis, and the work formerly performed by the telegraphers in the Carrier's 'GO' Office at St. Louis is merged and consolidated.
3. The wage agreement rules applicable to telegraphers on former NKP's Cloverleaf District telegraphers' seniority roster will apply to the one regular five-day per week assignment in 'GO' Office allocated to employees on that roster by Section 1 hereof."

The record shows that at the time of the occurrence giving rise to the claim herein there were eight telegrapher positions in the Carrier's "GO" office. The Claimant was the occupant of one of the 9:00 A. M. to 5:00 P. M. assignments. On August 26, 1968, the Claimant's birthday, his position was blanked; he was allowed eight hours' pro rata holiday pay, and the work of his position was absorbed by and performed by the occupants of the remaining positions.

The Petitioner contends that the Implementing Agreement of September 29, 1967, entitles employees holding seniority on the Cloverleaf District seniority roster to man the first shift telegrapher position in "GO" office covered by the Agreement five days per week; and that Carrier was obligated to permit the Claimant to fill the position on the birthday holiday.

The Carrier contends that under the Implementing Agreement of September 29, 1967, there is no division of work, and that all employees in the office, including the Claimant, perform work for both the former Wabash Railroad and the former Nickel Plate Road; that the positions of the other seven employees are blanked when a birthday-holiday falls on one of the work days of their work week, and the work thereon is absorbed and performed by the remaining positions.

It is well settled that, unless otherwise specified, a Carrier has a right to blank a position on a holiday, including a birthday-holiday. We do not consider that the Implementing Agreement of September 29, 1967, proscribes this right. Section 1 of that Agreement provides that "Employees on former NKP's Cloverleaf District telegraphers' seniority roster will be entitled to man one (1) regular five (5) day per week first shift 'telegrapher' assignment in Carrier's 'GO' Office, * * *." The Agreement does not provide that such position shall work five days per week. There was no violation of this portion of the Agreement by Carrier blanking the position on the Claimant's birthday-holiday and for which he received holiday pay.

Under Section 2 of the Implementing Agreement of September 29, 1967, the Carrier is permitted to have the "merged and consolidated" work performed by any or all of the telegraphers in "GO" office. It was not a violation of the Agreement for the remaining seven telegraphers to per-

form all the work required in the office on Claimant's birthday-holiday. The force was not augmented on that date. See Awards 17057, 17428 and 17673.

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 October 1970.