

Award No. 18807
Docket No. TE-19209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago and North Western Railroad, T-C 5803, that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when, on September 27, October 4, 11, 18, 25, November 1, 8, 15, 22, 29, December 6, 13, 20 and 27, 1969, it deprived Telegrapher-Clerk J. A. Beck, Fort Dodge, Iowa of the right to perform work of his position on the rest days thereof in the absence of a relief employe.

2. Carrier shall, as a result, compensate J. A. Beck at the time and one-half rate for the following:

September	27	— one 2 hour call
October	4	— one 2 hour call
	“	11 — 3 hours 30 minutes
	“	18 — one 2 hour call
	“	25 — one 2 hour call
November	1	— three 2 hour calls
	“	8 — two 2 hour calls
	“	15 — one 2 hour call
	“	22 — two 2 hour calls
	“	29 — two 2 hour calls
December	6	— three 2 hour calls
	“	13 — two 2 hour calls
	“	20 — two 2 hour calls
	“	27 — two 2 hour calls plus 10 minutes

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when, on October 18 and 25, 1969, it deprived Telegrapher-Clerk C. M. Clark, Fort Dodge, Iowa of the right to perform the work of his position on the rest days thereof in the absence of a relief employe.

2. Carrier shall, as a result, compensate C. M. Clark at the time and one-half rate for the following:

October 18 — one two hour call
" 25 — one two hour call

CARRIER DOCKETS: 6-30-23
6-30-24

EMPLOYES' STATEMENT OF FACTS: There is offered into evidence an Agreement between the parties, effective June 1, 1948, originally entered into by the Chicago Great Western Railway and its telegrapher employees represented by The Order of Railroad Telegraphers, which is on file with your Board and by this reference is made a part hereof.

Carrier subsequently merged with the Chicago and Northwestern Railway and the Organization became the T-C Division, Brotherhood of Railway and Airline Clerks, the effectiveness of the Agreement being maintained throughout these changes. The claims were timely presented, progressed, including conference with highest officer designated by Carrier to receive appeals, and have remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

The claims arose when Carrier required and permitted the monthly rated agent at Fort Dodge, Iowa, who may be used on the sixth day without additional cost, to handle train orders on the Saturday unassigned rest days of Claimants who are incumbents of two telegrapher-clerk positions at Fort Dodge and who perform all train order work during the working days of their positions.

The Employes contend that where work is required on the rest days of positions which are not made a part of regular relief assignments that Carrier may use an available extra or unassigned employee who will otherwise not have forty hours of work that week and in all other cases the regular employee who in these claims are made claimants.

Carrier defends on the grounds that the monthly rated agent comes within the Scope of the Agreement, and that while he does not perform any train order work on Monday through Friday, that he can be used on Saturdays to perform such work without additional cost to the Carrier and the work thus becomes a part of his assignment on Saturdays and is not unassigned work as contended by the Employes.

(b) ISSUE

Did the Carrier violate the Agreement when it failed to use the regular incumbents of the Telegrapher-Clerk positions at Fort Dodge, Iowa to perform work of handling train orders on their Saturday rest day which is exclusively performed by them during their assigned work days?

(c) FACTS

J. A. Beck, at the time of occurrence involved in this claim, was regularly assigned to the first shift Telegrapher-Clerk position at Fort Dodge, Iowa with regular hours of 6:00 A. M. to 2:00 P. M., a five day position assigned to work Monday through Friday with Saturday and Sunday as rest days.

C. M. Clark, was regularly assigned to the second shift Telegrapher-Clerk position at Fort Dodge with regular hours of 2:00 P. M. to 11:00 P. M., also a five day position assigned to work Monday through Friday with Saturday and Sunday as rest days.

Reference your time report No. 4-A, Nov. 24, 1969, Nov. 30, 1969 claiming 4 hrs., (two 2 hr. calls), Nov. 29th account agent working 1st trick telegrapher job.

The agent is also covered by the telegraphers' agreement and therefore claim is denied.

/s/ D. F. Gifford
D. F. Gifford
Chief Train Dispatcher

fg/

Oelwein, Iowa
Nov. 4, 1969

C. M. Clark, Opr.
Fort Dodge, Iowa

Reference your time report No. 4½ dated Oct. 18 - Oct. 25, 1969, claiming two 2 hr. calls account agent copied orders and cleared trains, 186 on dates mentioned above.

The agent is also covered by the telegraphers' agreement and therefore claim is denied.

/s/ D. F. Gifford
D. F. Gifford
Chief Train Dispatcher

fg/

Claim No. 1

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
System Division No. 96
December 1, 1969

Mr. G. R. Hanson
Superintendent
CGW District C&NW Ry. Co.
Oelwein, Iowa 50662

File R-314

Dear Sir:

Claim is appealed from the decisions of Chief Dispatcher Gifford as follows:

STATEMENT OF CLAIM: Claim of General Committee of Transportation-Communication Division 96 of BRAC on the Chicago Great Western Railway as follows:

1. Carrier violated the Agreement when on Sept. 27, Oct. 4, 11, 18, 25, Nov. 1, 8, 15, 22, 29, 1969 it deprived Telegrapher-Clerk J. A. Beck, Fort Dodge, Iowa of the right to perform the work of his position on the rest days thereof.

2. Carrier violated the Agreement when on Oct. 18 and 25, 1969 it deprived Telegrapher-Clerk C. M. Clark, Fort Dodge, Iowa of the right to perform the work of his position on the rest days thereof.

3. Carrier shall, because of the violations listed compensate J. A. Beck at the time and one-half rate as follows:

September 27	one 2 hour call
October 4	one 2 hour call
October 11	3 hours 30 minutes
October 18	one 2 hour call
October 25	one 2 hour call
November 1	three 2 hour calls
November 8	two 2 hour calls
November 15	one 2 hour call
November 22	two 2 hour calls
November 29	two 2 hour calls

4. Carrier shall, because of the violations listed compensate C. M. Clark at the time and one-half rate as follows:

October 18	one two hour call
October 25	one two hour call

STATEMENT OF FACTS: J. A. Beck is assigned telegrapher-clerk, Fort Dodge, Iowa hours 6 A. M. to 2 P. M. Monday-Friday, Rest days Saturday and Sunday no relief furnished.

C. M. Clark is assigned telegrapher-clerk, Fort Dodge, Iowa hours 2 P. M. to 10 P. M. Monday-Friday, Rest days Saturday and Sunday no relief furnished.

There is also at Fort Dodge a monthly rated agent as provided in Addendum No. 2 of the Agreement.

Each of the dates here listed are Saturdays, one of the rest days of the claimants. On each of the dates the Carrier allowed the monthly rated agent to perform the work of these telegraphers in amounts as listed instead of using the telegrapher involved to perform this work which is his to perform during the regular work-week of the telegraphers positions.

Claim No. 1

EMPLOYES POSITION: It is the position of the employes that all work of handling work on rest days must be performed as provided in Rule 8(m) of the current agreement. This issue has been decided in past years in many instances in favor of the employes in that work on unassigned days must be properly assigned under the rules and not unilaterally given to any employe whom happens to be available or working at the time. Rule 16 provides that train orders and communication of record belong to the employes under this agreement. Rule 5 supports the amount of payment claimed here in support of the violation as outlined in statement of claim.

Would you please give this claim consideration and allow as presented and also restore the work to the proper employes at Fort Dodge, Iowa as provided in the agreements and board decisions on the matter.

Dear Sir:

Claim is appealed from the January 23, 1970 decision of Superintendent Hanson Oelwein, Iowa, his file TCU-9-27-69-20 as follows:

STATEMENT OF CLAIM: Claim of General Committee of Transportation-Communication Division 96 of BRAC on the Chicago Western Railway as follows:

1. Carrier violated the Agreement when on Sept. 27, Oct. 4, 11, 18, 25, Nov. 1, 8, 15, 22, 29, 1969 it deprived Telegrapher-Clerk J. A. Beck, Fort Dodge, Iowa of the right to perform the work of his position on the rest days thereof in the absence of a relief employe.
2. Carrier violated the Agreement when on Oct. 18 and 25, 1969 it deprived Telegrapher-Clerk C. M. Clark, Fort Dodge, Iowa of the right to perform the work of his position on the rest days thereof in the absence of a proper relief employe.
3. Carrier shall, because of the violations listed compensate J. A. Beck at the time and one-half rate as follows:

September 27	one 2 hour call
October 4	one 2 hour call
October 11	3 hours 30 minutes
October 18	one 2 hour call
October 25	one 2 hour call
November 1	three 2 hour calls
November 8	two 2 hour calls
November 15	one 2 hour call
November 22	two 2 hour calls
November 29	two 2 hour calls

4. Carrier shall, because of the violations listed compensate C. M. Clark at the time and one-half rate as follows:

October 18	one two hour call
October 25	one two hour call

STATEMENT OF FACTS: J. A. Beck is assigned telegrapher-clerk, Fort Dodge, Iowa hours 6 A. M. to 2 P. M. Monday - Friday, Rest days Saturday and Sunday no relief furnished.

C. M. Clark is assigned telegrapher-clerk, Fort Dodge, Iowa hours 2 P. M. to 10 P. M. Monday - Friday, Rest days Saturday and Sunday no relief furnished.

There is also at Fort Dodge a monthly rated agent as provided in Addendum No. 2 of the Agreement.

Each of the dates here listed are Saturdays, one of the rest days of the claimants. On each of the dates the Carrier allowed the monthly rated agent to perform the work of these telegraphers in amounts as listed instead of using the telegrapher involved to per-

You state you are advised the claim for Sept. 27, 1969 is outlawed under the time limit rule by Supt. Hanson as stated in my letter of March 17, 1970 to him. This is true but I assume he also advised you I stated this had happened due to our working on agreement rule changes in your office during this period of time and the claim for this instant date was appealed 62 days after previous denial decision. If Carrier wants to be this small about this one date of the claim then that is their perogative. However there are no other procedural difficulties in these claims so I will proceed from here.

Claim No. 1

You then state there was no agreement violation in using the monthly rated agent to perform service on his assigned days and which we cannot agree with as he is and was during the dates of these claims not entitled to perform work on the rest days of the telegraphers, the exact work and duties which the telegraphers performed on their work days of their regular work weeks, and which work the monthly rated agent did not perform during the other days of his assignment.

In conference on Dec. 2, 1970 these were discussed in detail, I referred you to Awards of the Third Division: 4748 - 4775 - 4817 - 5760 - 6019 - 6562 - 6688 - 6689 - 6693 - 6946 - 9946 - 10575 - 10646 - 11565 - 11723 - 12137 - 13142 - 13354 - 13618 - 13824 - 14029 - 14071 - 14137 - 14160 - 14191 - 14255 - 14379 - 14626 - 14703 - 14903 - 15064 - 15328 - 15791 - (17436 C&NW) - 17437 - (17581 MSTL) - 17844 - 17969 - 18057, all of which deal with the unassigned day rule which is incorporated in the CGW Telegraphers agreement of June 1, 1948, reprinted May 1, 1958 as Rule 8(m) and which for ready reference I here quote in its entirety again.

Rule 8 Section 1 Para. (m) - Page 9, entitled Work on Unassigned Days.

"Where work is required by the Carrier 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."

There was no regular relief position assigned at Fort Dodge on these regular rest days of these telegraphers, there was no extra or unassigned employe available who did not have 40 hours in his work week, instead the monthly rated agent was used to perform these duties instead of as the rule states, "in all other cases by the regular employe." Beck and Clark are and were the regular employes.

Your decisions are unacceptable and I regret that we will have to pursue these cases further.

Yours truly,

/s/ M. C. Ruid
M. C. Ruid
General Chairman

Claim No. 1

Oelwein Iowa
March 4, 1970
File: TCU-12-6-69-24

Mr. M. C. Ruid
General Chairman TCEU
P. O. Box 612
Eau Claire, Wis. 54701

Dear Mr. Ruid:

Please refer to your letter of February 2, 1970, in which you appeal the claim of Telegrapher-Clerk J. A. Beck, Fort Dodge, for three two-hour calls December 6, 1969, two two-hour calls December 13, 1969, two two-hour calls December 20, 1969, two two-hour calls plus ten minutes at overtime rate December 27, 1969, account agent at Fort Dodge copying train orders on the Saturdays listed, the regular rest day of claimant's assignment.

The facts in this case are substantially as outlined in your letter of February 2, 1970. However, inasmuch as the work complained of was performed by an employe coming within the scope of the Telegraphers' Agreement, it is our position that the claims lack support of schedule rules and accordingly are declined.

Yours truly,

/s/ G. R. Hanson
G. R. Hanson
Superintendent

Claim No. 2

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
System Division No. 96
March 17, 1970

Mr. W. J. Fermon
Director of Labor Relations
Former CGW District C&NW Ry. Co.
500 West Madison Street
Chicago, Illinois 60606

File R-321

Dear Sir:

Claims are appealed from the March 4, 1970 decision of Superintendent Hanson, Oelwein, Iowa his file TCU-12-6-69-24 as follows:

STATEMENT OF CLAIM: Claim of General Committee of Transportation-Communication Division 96 of BRAC on the Chicago Great Western Railway as follows:

1. Carrier violated the Agreement when on Dec. 6, 13, 20, 27, 1969 it deprived Telegrapher-Clerk J. A. Beck, Fort Dodge, Iowa of the right to perform the work of the position assigned on the rest days thereof in the absence of a proper relief employe.

2. Carrier shall, because of the violations listed compensate J. A. Beck at the time and one-half rate as follows:

December 6, 1969	Three 2 hour calls
December 13, 1969	Two 2 hour calls
December 20, 1969	Two 2 hour calls
December 27, 1969	Two 2 hour calls plus 10 mins. at overtime rate.

STATEMENT OF FACTS: J. A. Beck is the assigned telegrapher-clerk, Fort Dodge, Iowa hours 6 A.M. to 2 P.M. Monday-Friday, Rest days Saturday and Sunday no relief furnished. There is also at Fort Dodge a monthly rated Agent as provided in Addendum No. 2 of the CGW Agreement of June 1, 1948 at the time of this claim.

There is also another telegrapher-clerk position at Fort Dodge which is not involved in this claim with assigned hours 2 P.M. to 10 P.M. Monday - Friday, rest days Saturday and Sunday no relief furnished.

Each of the dates here listed are Saturdays, one of the rest days of the claimant. On each of the dates the Carrier allowed the monthly rated agent to perform the work of the claimant in amounts as listed instead of using the telegrapher involved to perform this work which is his to perform during the regular work-week of his position. The contents of this work are as outlined on timeslip form 490.

EMPLOYEES POSITION: It is our position that all work of handling work and duties on rest days must be performed as provided in Rule 8(m) of the agreement. This issue has been decided in past years in many instances in favor of the employees in that work on unassigned days must be properly assigned under the rules and not unilaterally given to any employee whom happens to be available or working at the time. Rule 16 provides that train orders and communication of record belong to the employees under the agreement. Rule 5 supports the amount of payment claimed here.

The following 3rd Divn. NRAB Awards sustain the Organizations position under the National Rest Day Rule adopted in 1949 which covers this instant claim. 4728 - 4775 - 4817 - 5760 - 6019 - 6562 - 6688 - 6689 - 6693 - 6946 - 9946 - 10575 - 10646 - 11565 - 11723 - 12137 - 13142 - 13354 - 13618 - 13824 - 14029 - 14071 - 14137 - 14160 - 14191 - 14255 - 14379 - 14626 - 14703 - 14903 - 15064 - 15328 - 15791 - 17436 - 17437 - 17581 - 17844.

Will you kindly consider advising. Mr. Hanson has been advised his decision is not acceptable.

/s/ M. C. Ruid
M. C. Ruid
General Chairman

Claim No. 2

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
System Division No. 96
March 17, 1970

Beck, Fort Dodge, Iowa. The claimant was assigned to work as Telegrapher-Clerk at Fort Dodge, daily except Sunday, 6:00 A. M. until 2:00 P. M. Claims are also submitted in behalf of Telegrapher-Clerk C. M. Clark on Saturdays, October 18 and 25, 1969, for calls. He was assigned to work as Telegrapher-Clerk, daily except Sunday, 2:00 P. M. until 10:00 P. M., at Fort Dodge.

In addition to the claimant Telegrapher-Clerks, a monthly rated agent coming under the scope of the same agreement was employed at Fort Dodge working daily except Sunday. On the dates of claim, he copied train orders and issued clearances.

Claim is submitted on the basis of the employees' contention that the performance of this work by the agent on Saturdays, which was performed by the claimants on their work days, was a violation of the Agreement.

The claims have been denied.

OPINION OF BOARD: At the time the claim herein arose the Claimants were employed at Fort Dodge, Iowa, as telegrapher-clerks, with work weeks of Monday through Friday, on which days their duties included the copying of train orders and the issuance of clearances. The Carrier also employed at Fort Dodge a monthly rated agent covered by the same agreement and on the same seniority district as Claimants, and who was assigned to work Monday through Saturday. The claims arose because of the monthly rated agent handling train orders and clearances on Saturdays.

The Petitioner relies primarily on Rule 8, Section 1(M) — Work on Unassigned Days rule of the National Forty Hour Week Agreement and contends that the Claimants should have been called on their rest days to handle the train orders. The Carrier takes the position that there is no restriction in the agreement against the monthly rated agent handling train orders, that such work may be properly assigned to him on Saturdays, and that as the work on Saturdays was part of the monthly rated agent's assignment, it was not "work performed on a day which is not part of any assignment" as referred to in the Work on Unassigned Days rule.

In its submission the Petitioner cites and relies upon Awards 6688 and 6689, among others. In the discussion of the dispute the Carrier and Labor Members have cited numerous other awards which they contend support their respective positions.

Our attention has been called to Award 6946 and the long line of awards which appear to be consistent therewith holding in effect that work of two separate positions in the same seniority class and in the same seniority district may be combined on the rest days of one of the positions. See Awards 8136, 9030, 9042, 9043, 9105, 9119, 0577, 9772, 10056, 10622, 15905. Those awards are controlling herein and in accordance therewith the claim will be denied. This case is clearly distinguishable from some of the cases cited by and in behalf of the Organization, including some decided by this referee, where the work on the rest day of the Claimant was performed by employees of another craft.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.