Award No. 19035
Docket No. TE-15159

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado & Southern Railway, that:

1. Carrier violates and continues to violate the terms of an agreement between the parties hereto commencing September 15, 1963 when, following the abolishment of the third shift telegrapher's position at Clayton, New Mexico, it transferred duties attached to said position to employes outside the scope of said agreement.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, beginning September 15, 1963, compensate B. B. Baker, regular occupant of the second shift telegrapher's position Clayton, New Mexico, and/or his successor, a "call" for each work day of his work week and so long thereafter as the violation complained of continues, and

3. Carrier shall beginning September 16, 1963, compensate Miss L. L. Trolinder, regular occupant of the rest day relief position at Clayton, New Mexico, and/or her successor, a "call" for each day relief service is performed on second shift Clayton and for each of such days thereafter so long as the violation complained of continues.

4. Carrier shall restore the third shift position at Clayton, New Mexico.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the Colorado & Southern Railway Company, hereinafter referred to as Carrier, and its employes represented by The Order of Railroad Telegraphers, hereinafter referred to as Employes and/or Organization, effective October 1, 1948, including changes and agreed-to interpretations to the date of reissue, January 1, 1955, with rates of pay effective December 3, 1954, and as amended. Copies of said agreements are available to your Board and are by this reference made a part hereof.

At page 38 of said agreement, Under Rule 39 — Rates of Pay, are listed the positions existing at Clayton, New Mexico, on the effective date thereof. For ready reference the listing reads:

the fact that the highest officer designated by the Carrier had previously and properly declined the original claim evolving from this same set of circumstances and that his (District Chairman's) attempted revival thereof on the local level was not only highly irregular but wholly improper under provisions of Article IV of Appendix No. 3 of the Telegraphers' Agreement. (See Carrier's Exhibit "H").

On August 22, 1964, the nine month period for taking the case to the Board or be barred from further progression, as stipulated in said Article IV of Appendix No. 3, duly expired and the Carrier wrote the General Chairman and so apprised him (See Carrier's Exhibit "I").

On the basis of the foregoing facts, the case before your Board is not the case handled under provisions of the Telegraphers' Agreement on the property of The Colorado and Southern Railway Company.

(Exhibits not reproduced.)

OPINION OF BOARD: Procedural questions raised by Carrier must be considered at the outset. Carrier contends that the proceedings before the Board were instituted untimely. Carrier's letter of September 16, 1964 to the General Chairman, in this regard, reads as follows:

> "In asmuch as proper declination was made of this claim in my letter of November 22, 1963, and procedings were not instituted within nine months from said date for handling to a conclusion, this claim is barred from further progression under the provisions of Article IV (c) of Appendix No. 3, Agreement of August 21, 1954, of the currently effective collective agreement."

Carrier contends further that the revision of the claim, which will be discussed below, constituted a new claim which was not filed until seven months after the event giving rise to the claim and therefore was untimely under Article IV and should be dismissed. Petitioner contends that it had a right to amend its claim on the property. It contends that its amendment does not constitute a new claim and that the claim was progressed in a timely fashion.

It is clear from the record that after the claim, as it was originally filed, was denied, on November 22, 1963, by the Assistant to Vice President, the highest officer designated to receive appeals, Petitioner revised its claim and on April 24, 1964 submitted it to the General Superintendent, the first step in the grievance procedure, who responded on May 13, 1964, stating, in effect, that as he had already denied the claim he did not have to do so again. He also pointed out that the handling of the claim was irregular and aws in violation of Article IV.

The record clearly reveals that the original filing on September 17, 1963, was followed by timely and proper handling culminating in the denial by the highest officer on November 22, 1963 and his reiteration of such denial on February 24, 1964, following a conference on that date with the General Chairman. Thereafter, on April 24, 1964 the District Chairman submitted the amended claim to the General Superintendent stating in part "* * * we art amending our claim * * *." The amendment changed the damages sought from "a day" to "a call" from the beginning of the alleged violation and substituted the name of a claimant in place of one on the claim as originally filed. As indicated above, the General Superintendent replied on May 13, 1964. His declination was rejected by the District Chairman. The General Chairman,

on une 4, 1964, advised the Assistant to Vice President ignored this letter. Thereafter, on August 14, 1964 Petitioner filed its Notice of Intent with this Board.

Adherence to the rules governing processing of claims is essential to the expeditious handling of claims before this Board. However, the interpretation of these rules should not be so technical as to deny the Board the opportunity to consider the merits of cases which, while inartfully handled, are progressed within the spirit of the rules. In this connection the Board has held that amendments on the property, which involve variations in the amount of reparations sought, where the subject of the claim remains the same and the Carrier is not misled by the amendment, do not serve to invalidate claims. Awards 3256, 12465 and others. We are persuaded that the amendment herein raised on the property was not fatal to the claim.

We also find that the amendment of the claim was not a new claim as contended by Carrier. Thus, we further find that the claim was not filed seven months after the event giving rise to it.

The record clearly shows that the Notice of Intent, dated August 14, 1964, was filed within nine months of the denial of November 22, 1964 and was therefore timely.

As we find that the claim was handled within the time limits of Article IV we shall proceed to consider the merits.

We have considered the various cases cited by the parties and the record in this matter. We find that Carrier properly abolished the position of third trick Telegrapher on September 15, 1963. The hours of that trick were from 11:59 P. M. to 7:59 A. M. The third trick was the shift on which the disputed head end work on Train No. 7 was performed by Claimant Baker when the train arrived at 4:21 A. M. After the abolishment Carrier rearranged the hours of the remaining employes. Thus, the Agent-Telegrapher's hours became 8:30 A. M. to 4:30 P. M., Monday through Friday and the hours of Claimant-Telegrapher Baker became 7:00 P. M. to 3:00 A. M., Wednesday through Sunday. Both were relieved by Claimant-Telegrapher Trolinder.

As there was no Telegrapher on duty after September 15, 1963 when train No. 7 arrived at 4:21 A. M., the station portion of the disputed work was performed by a trainman pursuant to an agreement with Carrier dated August 24, 1950.

The question to be decided is whether Claimants were entitled to a call when the only work to be performed was head end work on Train No. 7. This work is only one of the duties of Telegrapher. It is not, as the record shows and as the classification title would indicate, the primary function. We are persuaded, in the circumstances of this case, Petitioner may prevail only if it proves that this work has been reserved to it exclusively on a system-wide basis.

The Scope Rule being general in nature and the work not being specifically listed in the Rule, it is well settled that the burden of proving that the work has been, by custom and practice reserved exclusively to Employes, rests with Petitioner. We find that on this record Petitioner has not carried its burden. In awards of this Board involving the same parties there have been previous findings that such work is not reserved exclusively to Petitioner. Awards 15633, 8261.

Accordingly, as there was no work being performed on Train No. 7 after September 15, 1963 by trainmen, which was reserved exclusively to Petitioner on a system wide basis, we shall deny the claim. Award 18368 and others.

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 28th day of February 1972.

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