

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19331
Docket Number TE-18190

Arthur W. Devine, Revere

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Employees Union)
PARTIES TO DISPUTE: (
(Maine Central Railroad Company Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Maine Central Railroad Company (Portland Terminal Company), that:

1. The Carrier violated the Provisions to the Rules of the Agreement and also the Mutual Agreement between the Maine Central Railroad-Portland Terminal Company and the Order of Railroad Telegraphers dated August 10, 1960 when effective March 30, 1968 it blanked the position of first trick Telegrapher at Rigby "PN" Office on Saturdays and transferred the work to the operator at Tower Two and the Clerical field.

2. The Carrier shall be required to compensate the senior idle extra employee on the Portland Terminal spare board, or if no extra employee available, then the regular occupant of the first trick Operator in this office, at the appropriate rate of pay.

This claim to commence Saturday, March 30, 1968 and continue each Saturday on which this position is improperly blanked.

OPINION OF BOARD: This dispute involves a contention by the Organization that Carrier violated the agreement beginning Saturday, March 30, 1968, when it allegedly transferred work of the first trick position at "PN" office to clerical employees and a telegrapher at another office on Saturdays.

It appears that the position in question was changed from a six-day position to one of five days, with Saturday and Sunday as rest days. Some work, however, performed by the incumbent on his work days, was required to be performed on Saturdays. Instead of using the regular incumbent to perform this work, Carrier had it performed by a telegrapher at another location and a clerical employee not subject to the telegraphers' agreement.

The telegrapher regularly assigned to the first trick at "PN" office filed a claim, dated April 9, 1968, as follows:

"Claim 8 hours account clerks doing operators' work 7:59 a.m. to 3:59 p.m. this date Rigby Telegr. Office. No spare man available."

This claim was disallowed by the Carrier on the ground that the work was performed as prescribed by an agreement dated August 10, 1960, between the parties.

On April 11, 1968, the General Chairman, who is also the incumbent of the first trick position at "PN" office, wrote to the Carrier protesting the change in rest days of the position.

On April 23, 1968, a conference was held concerning the agreement of August 10, 1960, and its application to the work alleged to have been improperly assigned to clerical employees on the rest days of the telegrapher position. No agreement was reached, however, for on April 28, 1968, the General Chairman filed a formal claim which appears to include the essential elements of the claim subsequently presented to the Board in this docket.

Under date of April 30, 1968, the Carrier wrote the General Chairman a lengthy letter covering the basic complaint. The entire "Memorandum of Agreement", dated August 10, 1960, was quoted. This document provides in pertinent part that:

"IT IS AGREED:

"When Telegraphers are employed and on duty at 'PN' Office, Portland Terminal Company, Rigby, Maine, the work of operating machine located in that office ... for the purpose of transmitting and receiving, will be performed by Telegraphers; at other times, such work may be performed by any other Class of Employees for other than manual communication.

"The Parties concur that the specific work outlined herein, excluding manual communication, is not exclusive to Telegraphers' Class."

Under date of May 7, 1968, the Carrier addressed another lengthy letter to the General Chairman in which it declined the formal claim of April 28, 1968, stating its reasons in some detail.

The General Chairman responded on May 10, 1968, to the effect that the declination of the claim by Carrier's Superintendent was unsatisfactory and would be appealed.

From this point forward the record presented to the Board by the Petitioner, so far as it relates to further appeal on the property reveals that many assertions as to the intent of the agreement were made, but that no evidence of probative value was presented in support of those assertions.

It is well established that: (1) The burden of proof to support its position rests with the Petitioner; and, (2) Assertions, no matter how vehemently made, cannot be equated with such evidence.

Accordingly, the claim will be dismissed for lack of proof.

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

That no Agreement violation is shown.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1972.