

Award No. 3955
Docket No. TE-3957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

HUDSON & MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: (a) The Carrier violated the terms of the Telegraphers' Agreements when and because for the period August 5, 1946 through August 21, 1946, except August 18, one P. A. Marcasiano (Gateman), an employe not subject to the provisions of the Telegraphers' Agreement and whose name is listed on the seniority roster of another class or craft, was permitted and/or required to occupy various positions under the Telegraphers' Agreement at times employes under the Telegraphers' Agreement were available and willing to protect such positions, and,

(b) In consequence thereof these employes for whom overtime claims have been filed for work denied them, who were available for said work, and whose names and the hours claimed are shown in the Organization's Statement of Facts, shall be compensated in accordance with said claims.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, last revised January 17, 1945, as to rules and May 22, 1946 as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

August 5, 1946 through August 21, 1946, except August 18, P. A. Marcasiano, a Gateman, an employe not subject to the provisions of the Telegraphers' Agreement, and whose name is listed on the seniority roster of another class or craft, was permitted and/or required by the Carrier to occupy various positions under the Telegraphers' Agreement at times employes under the Telegraphers' Agreement were available and willing to protect such positions on the "Call" and/or "Overtime" basis.

The dates and hours worked by Mr. Marcasiano, who he relieved, the hours claimed and the names of the claimants in accordance with the tabulation below was submitted to the Carrier under date of August 22, 1946. The highest operating officer to whom appeals are directed denied the claims November 4, 1946.

between the Carrier and The Order of Railroad Telegraphers which restricts the Carrier so far as work assignments of Acting Train Clerks are concerned, either as to regular usage in the covering of vacant tours which may exist in the class of Train Clerks, or on a temporary basis to meet emergency conditions, or in the same manner Marcasiano was used.

It is further stated that in cases of emergency due to a shortage of Acting Train Clerks or a depletion of such list due to unusual conditions, the Brotherhood of Railroad Trainmen has accorded the Carrier the right to utilize Stationmen represented by such Organization who have qualifications as Acting Train Clerks, even though, as in the case of Marcasiano, they may have relinquished their rights to work in the capacity of Acting Train Clerk. Therefore, as already stated, in connection with the use of Marcasiano in the capacity of Acting Train Clerk for emergency purposes, there was no violation of the current Agreement between the Carrier and The Order of Railroad Telegraphers.

The Carrier, therefore, respectfully submits that claimants are not entitled to any recovery herein, and that your Board should deny the entire claim.

EXHIBITS NOT REPRODUCED

OPINION OF BOARD: The claim of the Organization in this case is grounded on the ineligibility of one Marcasiano to perform work within the scope of the Telegraphers' Agreement.

Marcasiano entered the service of the Carrier as a Station Department employe, a department not within the scope of the Telegraphers' Agreement. Marcasiano, however, qualified as an Acting Train Clerk and was certified as such by the Carrier. He was thereupon given a seniority date on the Telegraphers' roster. He retained his rights under the Telegraphers' Agreement during his military service and after the war was entitled to and received a regular position within the scope of the Telegraphers' Agreement. After working this position a short time, he resigned his position and gave up all rights under the Telegraphers' Agreement.

Thereafter, the Carrier needed some additional employes to perform work that was within the scope of the Telegraphers' Agreement. The Carrier prevailed upon Marcasiano to work temporarily as a Train Clerk with the understanding that he was to retain his position as Gateman and that he would attain no seniority or other rights while working the temporary position. The Organization complained of the use of Marcasiano. The Carrier declined to consider the complaint and a few days later placed Marcasiano's name on the Telegraphers' seniority roster as an extra.

The resignation of Marcasiano invalidated any and all rights he had under the Telegraphers' Agreement. He could not properly perform telegraphers' work thereafter unless he requalified the same as a new man would be required to do. It is a fundamental rule that work of a class covered by an agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the Agreement is violative of the Agreement. Under the rules such work must be given to available employes under the Agreement, even if overtime pay is required, before it can be assigned to one outside the Agreement.

Marcasiano had no rights whatever when he undertook to work as a Train Clerk. Claimants were entitled to the work and the Agreement was violated when it was not given to them.

Carrier contends that Marcasiano was properly placed on the Telegraphers' seniority roster after he commenced work. We think not. He did not requalify nor was he recertified as eligible. The evidence shows that he refused to be brought under the Telegraphers' Agreement. He wanted no seniority or other rights under that agreement. It is evident that the formality of writing his name on the seniority roster by the Carrier could avail the Carrier nothing. Marcasiano certainly could not be given rights or responsibilities under the Telegraphers' Agreement without his own consent, express

or implied. Consequently he had no rights under the Telegraphers' agreement which he or the Carrier could assert in his behalf.

The Organization claims that the employees deprived of the work should be compensated at the overtime rate. The penalty for work lost is the rate of the position. The overtime rate applies only where work in excess of eight hours in any day is actually performed. The overtime rule has no application where only the right to perform work is involved.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 the Agreement was violated as charged.

AWARD

Claim (a) sustained. Claims (b) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.