Under the
R A I L W A Y L A B O R A C T
Special Board of Adjustment No. 226
Hearings April 9-30, 1958
Dallas, Texas

Award No. 16

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM:

ORT Claim No. 44, the Carrier violated the Agreement and continues to violate it when, effective October 20, 1957, it abolished the relief agent's assignment at Vinita, Oklahoma (Sundays) and in lieu thereof engaged an outsider, one E. E. Larson, on a contract basis to perform work within the scope of the agent's position; that the Carrier shall now be required to return this work to the Agreement and compensate the Agent at Vinita for the loss of this work and remuneration to which he is entitled.

FINDINGS AND OPINION:

On October 20, 1957, the Carrier engaged an "outsider" on a contract basis of pay to perform "head end" work of two passenger trains on Sundays which were scheduled at Vinita within a few hours of each other. This work consisted of loading and unloading baggage, milk and cream, empty cans, U. S. Mail and related duties.

It is the contention of the ORT that this work is within the purview of the Scope Rule of the Telegraphers' Agreement and is the smae kind of work performed by the Agent at the same passenger trains on his regular assignment during the week and that the Agent himself is entitled to perform this Sunday work on an overtime basis.

Sunday is the Agent's rest day.

The record does not disclose how long prior to October 20, 1957 this dispute about Sunday "head end" work at Vinita arose between the ORT and the Carrier. But we infer from the correspondence between the parties it may have developed sometime early in 1957. In an effort to settle it, an extra relief agent was for a time assigned to perform the Sunday work at the two passenger trains. When no extra employe was available the regularly assigned Agent at Vinita was authorized to perform it on a call and overtime basis. Then on October 20, 1957, the relief agent job was discontinued and the present arrangement was made with a local man at Vinita to perform the Sunday "head end" work at the two passenger trains. He is not subject to the Telegraphers' Agreement.

In its submission the Carrier states that "we have never had an agent at Vinita on Sunday as clerical forces took care of passenger trains, tickets, etc." This evidence is not challenged. It refers to Sunday work at Vinita prior to the development of this dispute.

The Scope Rule does not guarantee work, as such. By application of its inherent meaning from position to position, we determine whether disputed work belongs to one position or another. In some instances "head end" work may belong to an ORT employe. But it is well established that "head end" work does not belong to ORT employes exclusively. It is often performed by employes outside of the Telegraphers' Agreement at stations both large and small. At Vinita, it has been traditionally performed on Sunday by clerks. Its assignment is largely within the discretion of the carrier.

At Vinita the Sunday work in question is not needed by the Agent to fill out his contractual schedule of hours. He is given his full guarantee of hours during the six work days of the week. It is the legally established policy of the Agreement that he shall have a rest day. Even if the Sunday "head end" work in question should be found to belong under the Telegraphers' Agreement, exclusively, it would not belong to the Agent himself, absolutely, as a matter of contractual right. It would belong, first, to a relief agent.

Moreover, if the two passenger trains were due to arrive at Vinita between one and four o'clock in the morning instead of between five and eight o'clock in the evening, it is quite understandable that the Agent would resist any effort to assign the work to him. And to give it to him or to require him to take it on a call basis at those early morning hours, would violate the policy that pervades the Agreement, namely, that the Agent shall have one full day a week as a rest day.

We find that it is discretionary with the carrier whether it performs the "head end" work at the passenger trains on Sunday at Vinita under a relief agent position or as it is now performing it. It is work which does not belong to the Agent, exclusively, as a matter of contractual right.

AWARD:

Claim denied.

/s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Fayette, Missouri

Dissenting as shown below
W. I. Chrsitopher, Employee Member
Deputy President, O. R. T.
3860 Lindell Blvd.
St. Louis 8, Missouri

/s/ A. F. Winkel
A. F. Winkel, Carrier Member
Ass't. General Manager
Missouri-Kansas-Texas Lines
Dallas, Texas

Dallas, Texas

August 1, 1958

DISSENT TO AWARD NO. 16 of M-K-T SPECIAL BOARD OF ADJUSTMENT NO. 226.

The undersigned dissents from the Findings, Opinion and Award of the majority for the following reasons:

Again we are presented with a situation where the majority rules that the Scope Rule does not guarantee work. This member would be grateful if the majority would make up its mind one way or another because in the preceding award (15) it has stated that the Scope Rule safeguards telegraphers' work at established positions. Now, with this award, we find the majority reversing itself by a holding directly contrary.

The claim here is the outcome of the Carrier farming out the Agent's work on his Sunday rest day beginning October 20, 1957. An extra telegrapher when available performed the Sunday rest day service; when not available the regular occupant was called to perform it. On October 20, 1957, the Carrier engaged an outsider off of the street to perform the head-end work for two passenger trains such as loading and unloading baggage, milk and cream, empty cans, U. S. mail, etc. These duties represented required and assigned work of the agent's position Monday through Saturday, within his regularly assigned hours. A requirement to perform work under the Agreement also establishes a right to perform it.

The Agreement, Rule 7, provides that:

> "Where payroll classification does not conform to Paragraph (a) of Rule 1, employes performing service in the classes specified therein shall be classified in accordance therewith."

Rule 1 (a), as much as is pertinent here, sets out that:

> "These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent-Telegrapher, Agent-Telephoner, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent ***."

The so-called Caretaker who was employed by the Carrier to do the Sunday rest day work at Vinita proceeded to perform service in the Agents' class and

in doing so took the place of the Agent. Under the seniority rules of the Agreement the caretaker had no standing whatever to act as a relief employe on this position or any other. The Third Division of the National Railroad Adjustment Board has consistently held that all of the work of a one-man station belongs to the agent thereof. Awards 217, 602, 4392, et al. That the character of the work performed at Vinita on Sundays, within the hours of the regular week-day assignment, is within the scope of the Agreement, has been upheld by many awards, e.g. 217, 602, 1018, 1082, 1083, 1084, 1121, 2420. See also awards 529, 535, 564, 1061, 1273, 1274, 1275, 6840, 6841 and other awards referred to therein.

The holding of the majority imputes that the handling of mail, baggage, milk and cream, etc., is one class of work Monday through Saturday and another class of work on Sunday. The undersigned has many reasons for not subscribing to an award which produces such a result. Furthermore, one of the thinnest excuses supplied by the majority for its award is that the Sunday work is not needed by the Agent to fill out his contractual schedule of hours; that it is the legally established policy of the Agreement that he shall have a rest day. But the majaority does not proceed to explain what represents his "contractual schedule of hours" because, contractually, he is subject to being worked five, six or seven days per week, and overtime in addition. To say that the Agent is not entitled to such Sunday work simply because he doesn't need it is a sorry conclusion toward applying an agreement.

Then it is opined that even if the Sunday "head end" work should be found to be under the Telegraphers' Agreement it would not belong to the Agent himself but to the relief agent. When the Carrier fails and refuses to assign a relief agent the work belongs to the regular occupant. The Agreement, Rule 26, Section 1 (n) provides that:

> "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."

Prior to October 20, 1957, the Carrier filled the position at Vinita on Sundays by an extra employe when available; when not available by using the regular agent who is the claimant in this case. In the absence of a relief employe the Agent was entitled to the work over and above the non-employe who was used. The Third Division has so signified in so many instances that seldom is the question now raised.

There is still another conclusion of the majority in opposition to the Agreement and that is that in cases of night trains the Agent would resist any effort to assign him such work. This is more conjecture that results from disregarding the Agreement. Many of the awards we have cited touch on this very proposition of the right of the employe under the Agreement to perform such work outside of his assigned hours at any time of the day or night. There is little reason to emphasize that the awards hold that the Agent is entitled to be called for such service as against its performance by persons other than covered by the agreement.

The majority's finding that the assignment of head-end work at Vinita is discretionary on the part of the Carrier is a finding which defies the Agreement at every turn and the many awards of the Third Division. The award was reached purely without regard forthe Agreement and the reasoning leading to it fully justifies my disagreement.

W. I. Christopher, Employe Member