

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

DISPUTE.—"Claim of Station Agent D. F. Sullivan, at Bensenville, Ill., to a call on January 1 and January 15, 1933, for station work performed at his station by an employee not under his supervision."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. A hearing was had. The Third Division failed to agree upon an Award because of a deadlock. Paul Samuel was selected as a Referee to sit with the Division as a member thereof and make an Award.

The parties have jointly certified the following Statement of Facts, and the Third Division so finds:

"Station Agent D. F. Sullivan at Bensenville, Illinois, claims payment for a call each date, Sundays, January 1 and 15, 1933.

"Bensenville would be within the Chicago Terminal District and Station Agent Sullivan's regularly assigned hours would be 7:00 a. m. to 4:00 p. m., daily except Sunday, and on the dates mentioned, Sundays, Chief Yard Clerk West Yard Bensenville collected payment for freight charges on one car of horses each date and Station Agent Sullivan claims he should have been called to perform the work and paid therefor."

An Agreement, bearing effective date, December 1, 1927, is shown to exist between the parties governing wages and working conditions of employees therein designated, from which agreement petitioner cites and relies upon the following rules, to-wit:

"**RULE 1—PARAGRAPH (a).** This schedule applies to telegraphers, telephone operators (except switchboard operators), agents, agent telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators and staffmen, as set forth in the rule establishing the wage scale, hereinafter referred to as Employees."

"**RULE 7. Sunday and holiday work.**—Employees will be excused from Sunday and holiday duties as much as the conditions of business will permit.

"Time worked on Sundays and the following holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the regular hourly rate when the entire number of hours constituting the regular week day assignment are worked.

"When notified or called to work on Sundays and the above specified holidays a less number of hours than constitute a day's work within the limits of the regular week day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week day assignment shall be paid for in accordance with overtime and call rules."

As set forth in the jointly certified Statement of Facts, Agent Sullivan has no assignment on Sundays; and on Sunday, January 1, and Sunday, January 15, 1933, a carload of horses arrived at Bensenville for delivery to consignee, in which circumstances the Terminal Superintendent (to whom both Agent Sullivan and Yard Clerk Bishop were subordinate) directed Yard Clerk Bishop to attend the unloading of the car and the collection of freight charges.

Yard Clerk Bishop worked out of the yard office located approximately 1.2 miles distant from the Bensenville Station building. He had a regular Sunday assignment, and it is shown that upon both occasions the car of horses arrived during Yard Clerk Bishop's regular Sunday tour of duty.

CONTENTION OF EMPLOYEE.—Employee Sullivan was a regularly assigned agent and responsible for the handling of the business, including the making of reports, accounting, and remittances at that Station; that the Yard Clerk, Bishop, was not under the jurisdiction of Agent Sullivan; that under Rule 7, Agent Sullivan should have been called because the service was necessary on Sunday.

CONTENTION OF CARRIER.—Employee Sullivan was not "notified" or "called", nor performed any service; that there is nothing in the Agreement giving Agent Sullivan exclusive right to supervise the unloading of livestock, nor to collect freight charges at that station on Sunday; that Rule 7 becomes operative only when the employee is "notified or called on Sunday"; that since no trains were handled or trains blocked at the time and place in question, under Rule 1 (b) Agent Sullivan is without right to make claim.

The two provisions in this Agreement, i. e., "Employees will be excused from Sunday and Holiday duties as much as the conditions of business will permit", and "the handling of train orders or blocking of trains at stations where an employee as per this rule is employed, will be confined to employees covered by this schedule * * *", are controlling in this dispute.

Prior to December 28, 1918, it was desired on the part of the employees to be released from Sunday and Holiday labor so far as possible, and on that date the Director General of Railroads issued an order reducing the work day week from seven to six days, and imposed punitive penalties or allowances for Sunday work. Evidently the employees at that time desired relief from Sunday and Holiday work, hence the adoption of Rule 7. In effect the Rule says that the carrier must avoid Sunday and Holiday work whenever possible, and must pay punitive rates whenever it requests employees to work on such days. In other words, it was the spirit and intention of the Rule to avoid Sunday and Holiday work.

The employees now insist that they should be given Sunday work at punitive rates, but the contract neither expressly nor impliedly supports such contention, especially in view of Rule 1 (b) which provides "that the handling of train orders or blocking of trains at stations where an employee as per this rule is employed, will be confined to employees covered by this schedule" etc. Clearly, these are words of limitation. Had the framers of the contract intended that the handling of train orders or blocking of trains or *work of any character connected with the regularly assigned work of the employee* at stations where an employee as per this rule is employed, etc., should be the agreement between the parties, they could have easily expressed it.

It is not within the province of this Board to add to or take away language from an agreement made between the parties. In this case it would be necessary to alter the existing agreement between the parties in order to support the contention of the petitioner.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 15th day of October 1935.