

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Kentucky & Indiana Terminal Railroad that the Carrier, when it failed and refused to pay telegrapher T. J. Wright, while relieving train dispatcher, at rate of time and one-half for service performed on his regularly assigned rest days after March 1, 1945, violated Section 1(a) of Mediation Agreement, Case A-2070, and that telegrapher Wright now be paid the difference between pro rata rate, which was paid, and rate of time and one-half to which he is entitled under the provisions of Section 1(a) of said Mediation Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement, bearing effective date of June 15, 1945, is in effect between the parties to this dispute. Supplementing this agreement, Mediation Agreement, Case A-2070, dated July 13, 1945, and retroactively effective March 1, 1945, is also in effect between the parties to this dispute. (See Employees' Exhibit "A").

Between March 1, 1945, the effective date of the Mediation Agreement, and December 11, 1945, when his assigned rest day was changed as a result of this claim, T. J. Wright was regularly assigned as third trick telegrapher "YD" Telegraph office, Youngtown Yard, Louisville, Kentucky, hours of assignment being 11 P.M. to 7 A.M. daily except Saturday. On December 11, 1945, the assigned rest day of this position was changed to Tuesday. Wright, who is also the senior extra train dispatcher, was relieved at "YD" telegraph office, his regular assignment as a telegrapher, by an extra telegrapher on Sundays and Mondays, and in turn relieved the regular third trick train dispatcher on Saturdays, Sundays and Mondays. The third trick train dispatcher took his rest day which was Saturday, being relieved by Wright, and then relieved the other two train dispatchers one day each on their rest days Sundays and Mondays under the terms of the dispatchers' agreement. Thus the claimant, Wright, was required to work seven days each week including his assigned rest day, Saturday, on which rest day he worked as train dispatcher for which he received payment at the pro rata rate instead of at rate of time and one-half as provided in Section 1(a), Mediation Agreement, A-2070.

This claim has been handled with the highest officer of the Carrier designated to handle such cases and has been declined, therefore it is before your Board for decision.

POSITION OF EMPLOYES: The material facts of this case are not in dispute. The claimant was entitled to a rest day, and he was required by the Carrier to work as a train dispatcher on his assigned rest day. (See Em-

ter of equity he should be compensated at the time and one-half rate for one day of each week in which he has been required to work seven days since March 1st, 1945, and at the same rate for one day a week so long as he is required to work the entire seven days a week."

reveals that it relies on equity as the basis for its claim. Carrier desires to point out that the majority rule is that the Third Division of the National Railroad Board does not sit as a court of equity, the Board in its most recent decision (Award 3407) saying in part:

"We find that Rule 2(e) does not support this claim, nor have we found any rule in the agreement that would support this claim. This 'Board must construe and apply agreements as the parties make them and it has no authority to change them, even to avoid inequitable results from their application.' See Awards Nos. 794, 1248; also 2029."

Since the organization relies on equity to sustain its claim and the Board has consistently held that it must construe the agreements as the parties make them, the claim of the organization is without foundation and should be denied.

OPINION OF BOARD: A summary glance at the facts in this case and the Rest Day Agreement of 1945 might indicate, in equity, an injustice to Telegrapher Wright. He worked seven days a week without overtime pay.

This Board, however, is not a court of equity. We must set the facts and claims against all the agreements involved, and determine whether the claims have merit in the light of what the agreements say.

The facts in the case are as follows:

Telegrapher Wright between March 1, 1945, and December 7, 1945, held a regularly assigned seven-day telegrapher position, with Saturdays off. This work was covered by the agreement between the organization and Carrier dated June 15, 1945. In accordance with Rule 8, dealing with promotions, Wright also was at the top of the extra dispatchers' list. Taking him from that list, the Carrier assigned him to duty as a dispatcher Saturdays, Sundays and Mondays, thereby cutting his time as a telegrapher to four days a week. Wright assented to the assignment, although it should be pointed out that had he refused to work Saturday (his day off as a telegrapher), the Carrier could have removed him from the extra dispatchers' list and thus cost him any opportunity for advancement in his chosen field of endeavor.

Thus Wright was working under three agreements each week: (a) the telegraphers', implemented by the Rest Day Agreement of 1945 and (b) the dispatchers' which called for time and one-half for the seventh day which any extra dispatcher worked in any one week.

Now the organization (telegraphers) contends that under the Rest Day Agreement to which it was a party, Wright is entitled to time and one-half for the Saturdays he worked as a dispatcher for the Carrier.

The Carrier contends that Wright was not working under the organization's agreement when he was a dispatcher. Therefore it was none of the organization's concern what Wright did on his day off—whether he rested or worked as a dispatcher. Although the dispatchers' organization was not a party to this case, the Carrier indicated it would take a corresponding position if it were a party and made a similar claim in Wright's behalf. The Dispatchers' Agreement, as was pointed out above, provided for a penalty pay for extra dispatchers working a seventh day in a week.

The Board concludes that there was no violation of the Rest Day Agreement as alleged. When Wright was working as a dispatcher he was working under the Dispatchers' Agreement, not the Telegraphers' as supplemented

by the Rest Day Agreement. It was just as if he had used his day off to work in a grocery store. The organization surely would not contend that the grocer owed him time and one-half whatever his compensation might be because he worked the other days of the week as a telegrapher, covered by the Rest Day Agreement. In fact, we believe this case arose out of the close kinship between the dispatchers' and telegraphers' work. However close that kinship may be, we cannot let it influence our thinking in this case.

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 Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1947.