

Award No. 3836

Docket No. TE-3775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that the ticket agent at Easton, Pennsylvania, be additionally paid for three (3) hours (Call) under Article 27 of the Telegraphers' Agreement for each Sunday, August 1, 1945 through September 15, 1946, on which Sundays he was notified or called to perform work ahead of the starting time of his regular week day assignment.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of June 15, 1944, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At page 29 of the Telegraphers' Agreement, there is listed: "Easton, Ticket Agent, Rate of pay 90c per hour, (June 15, 1944). Prior to August 1, 1945, the Sunday starting time of the position was the same as the week day starting time. Beginning August 1, 1945 and continuing through April 27, 1946 the week day assignment was 10:00 A.M. to 8:00 P.M. with one hour out for meal—this assignment provided for one hour's overtime, viz. 7:00 P.M. to 8:00 P.M. The Sunday assignments were 9:00 A.M. to 11:00 A.M. and 6:00 P.M. to 8:00 P.M. Beginning April 28, 1946 and continuing through September 15, 1946, the weekday assignment was 9:00 A.M. to 7:00 P.M. with one hour out for meal—the one hour overtime each day continued, viz. 6:00 P.M. to 7:00 P.M. The Sunday assignments were 8:30 A.M. to 10:30 A.M. and 5:00 P.M. to 7:00 P.M. Effective September 16, 1946, the Sunday starting time was changed to correspond with the weekday starting time.

April 1, 1946 a revised rest day rule was placed in effect, and concurrent therewith a weekday was assigned to the Easton ticket agency position as the rest day, hence Sunday became a weekday within the meaning of the rule.

For the Sunday services performed 10:00 A.M. to 11:00 A.M. August 1, 1945 through March 31, 1946, the carrier allowed two (2) hours' pay at time and one-half rate in accordance with Article 27 (b), but did not allow two (2) hours' pay at time and one-half for the services performed 9:00 A.M. to 10:00 A.M. in accordance with Article 27 (a). Beginning April 1, 1946 the date the revised rest day rule became effective, the Carrier apparently allowed eight (8) hours pro rata for the services performed 9:00 A.M. to 10:30 A.M. and 5:00 P.M. to 7:00 P.M. on Sundays since Sunday became a weekday under these revised rules, but did not allow two (2) hours' pay at time and one-half for the service performed each Sunday (call) ahead of the regular starting time in

standing I had at the time we negotiated the new Agreement and eliminated the intermittent assignment rule and the fact that we have now eliminated all such assignments, I cannot authorize the payment of any backtime payments in these cases.

/s/ E. T. Moore."

Exhibits "A" and "B" attached, clearly provide for assignments with different Sunday and holiday starting time than weekday starting time, providing they are established by mutual agreement between the General Chairman and Head of Department. The Statement of Facts establishes that, prior to August 1, 1945, the assigned hours of this position on Sundays was within the limits of the weekday assignment. The foregoing evidence proves conclusively that the change in weekday starting time effective August 1st, 1945, was established by mutual agreement between the General Chairman and the Head of Department, all in accord with the provisions of the understanding outlined in Exhibits "A" and "B". The Organization agrees that the new weekday assignment established on August 1st, 1945, which provides the basis for this claim, was the result of the Management's Organization cooperative policy of eliminating intermittent assignments and, to argue that their concurrence in the new weekday assignment for the purpose of eliminating the former intermittent assignment does not at the same time constitute their concurrence in the relationship between the weekday and Sunday assignments thereby established, is untenable, particularly so in view of the understanding outlined in Exhibits "A" and "B".

Furthermore, there was no protest from any source about the weekday or Sunday assignments of this position following the change in the weekday assignment on August 1st, 1945, for more than one year. On September 11, 1946, the Organization first submitted this claim retroactive to August 1st, 1945. Of course, there is no basis at all for this claim because the change in hours on which the claim is predicated was the result of negotiation and mutual agreement with the Organization and, in addition, the claim as presented, retroactive to August 1st, 1945, in a direct violation of Article 36 of the current agreement:

Article 36—Compensation Claims

"(a) Claims for compensation alleged to be due must be presented in writing by an Employee or his representative to his Supervising Official within one hundred days from the date covered by the claim.

(b) The Employee or his Representative will be notified in writing within thirty days from the date the claim is presented if claim is not allowed. If not so notified, claim will be allowed.

(c) All compensation claims denied will be considered invalid unless appealed by the Representative within thirty days after the date on which the claim is denied and such appeals will be heard within thirty days thereafter. The Representative will be notified in writing within thirty days from the date the appeal is handled if claim is not allowed. If not so notified, the claim will be allowed."

The Carrier believes the Board will have no difficulty in reaching the conclusion that this claim is without merit.

Exhibits not reproduced.

OPINION OF BOARD: The General Committee claims that the ticket agent at East, Pennsylvania, should be additionally paid for a call under Article 27 of their Agreement for each Sunday during the period from August 1, 1945, through September 15, 1946, on the basis that he was called and performed work ahead of his regular weekday starting time.

The record shows that the claimant's weekday assignment, during the period from August 1, 1945, to March 31, 1946, inclusive, was from 10 A. M. to 8 P. M. with one hour off for lunch and the period from 7 P. M. to 8 P. M. on an overtime basis. On April 1, 1946, by reason of the Supplemental Agreement or

agreed that the position at Easton could have a different starting time on Sundays than on weekdays. What did happen was that the Agreement, effective June 15, 1944, did away with the rule permitting intermittent service, except as provided in Article 23, which is not applicable here. At that time Carrier had several positions, including the one here involved, where the work was being performed on an intermittent basis. It was the understanding of the parties that the Carrier was to have a reasonable time in which to change this condition. After some time had passed the organization, primarily through its General Chairman, urged and prompted the Carrier to make the change. As a result thereof the change was made at Easton effective as of August 1, 1945. We have carefully checked the record and find no evidence that the General Chairman, or anyone else in behalf of the organization, agreed or even discussed the matter of a different Sunday starting time in connection with these negotiations as they related to the Easton position.

Article 36(a) of the parties' Agreement provides:

"(a) Claims for compensation alleged to be due must be presented in writing by an Employee or his Representative to his Supervising Official within one hundred days from the date covered by the claim."

While the rule requires the claim to be presented within one hundred days from the date covered thereby, however, when it is a continuing claim that time relates to the last date thereof unless the parties have, by their conduct, created a situation that would make it inequitable to so enforce it. Such a situation does not exist here for it was the duty of the Carrier to pay this employee according to the provisions of their Agreement for the work it required him to perform. See Awards 2611 and 3518.

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 has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. O. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.