

Award No. 3981
Docket No. TE-4072

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, on the St. Louis-San Francisco Railway Company, that:

(a) The Carrier violated Mediation Agreement A-2070 of July 13, 1945, when it failed or refused to give telegraphers B. R. McWilliams and J. D. Freeman seventy-two (72) hours written notice of intended changes in their rest days; that

(b) Telegraphers McWilliams and Freeman are entitled to be compensated for eight (8) hours each at pro rata rate for having been suspended from work on Sunday, January 26, 1947; and that

(c) Telegrapher McWilliams is entitled to be compensated at time and one-half rate instead of pro rata rate for eight hours work performed on Monday, January 27, 1947, his duly assigned rest day.

JOINT STATEMENT OF FACTS: Pursuant to the provisions of Mediation Agreement A-2070 of July 13, 1945 between the parties hereto, said agreement being designated as Rest Day Rule, rest days were assigned, effective March 23, 1946, to the five telegrapher positions located in the carrier's telegraph office at Yale (Memphis), Tennessee, as follows:

Location	Position	Assigned Hours	Rest Day
Yale	1st Telegrapher	7:45 AM- 3:45 PM	Saturday
Yale	2nd "	3:45 PM-11:45 PM	Tuesday
Yale	3rd "	11:45 PM- 7:45 AM	Wednesday
Yale	Telegrapher	6:00 AM- 2:00 PM	Saturday
			(J. D. Freeman)
Yale	Telegrapher	3:00 PM-11:00 PM	Monday
			(B. R. McWilliams)

The rest days of these positions were assigned under the provisions of Section 1 (a) of the Rest Day Rule Agreement which provides:

"An employe occupying a position requiring a Sunday assignment of the regular week day hours shall be given one (1) rest day without pay in each consecutive period of seven (7) days. The rest day on such position shall be assigned and shall be the same day of the week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours written notice to the employes affected. If such employe is required to work on his

72 hours written notice when their assignments were reduced from seven to six days per week, whereas it is the Carrier's position that Article I, Section 1 (a) of the Mediation Agreement is not applicable to the dispute here presented, and relies upon Article VIII, paragraph 8 (b) of the Telegraphers' Schedule, effective May 16, 1928, reading as follows:

"No change shall be made in assigned working hours without at least thirty-six hours' notice to the employees affected."

Copies of the Telegraphers' Schedule are on file with the Board.

The Carrier complied with the schedule rule when it gave to Telegraphers Freeman and McWilliams more than thirty-six hours advance notice that the seven day per week positions they were occupying would be reduced to six days per week effective Sunday, January 26, 1947.

The Board's particular attention is invited to the fact that Article I of the Mediation Agreement of July 13, 1945 is divided into two separate and distinct Sections. Section 1 of that article definitely covers seven day per week positions, and Section 2 relates to six day per week positions. The Agreement definitely recognizes these two classes of positions.

Article I, Section 1 (a) provides that an employe occupying a position requiring a Sunday assignment of the regular week day hours shall be given one rest day without pay in each consecutive period of seven days; that the rest day on such position shall be assigned and shall be the same day each week, but may be changed to meet service requirements by giving not less than 72 hours written notice to the employees affected. This clearly has reference to change in rest day on a position requiring a Sunday Assignment and cannot apply in this case where the position was taken out of the class of positions covered by Section 1 of Article I and placed under Section 2 of this article.

It is the Carrier's position that the 72 hour written notice requirement in Section 1 (a) of Article I of the Mediation Agreement applies only to situations involving the changing of rest days of seven day positions, and not to the changing of positions from 7 day to 6 day jobs. There is no provision in the Mediation Agreement which requires notice to employees when jobs are changed from 7 day to 6 day positions.

Article 3 of the Mediation Agreement also reads:

"Rules of individual schedules not changed or modified shall continue in effect."

Article VIII, paragraph 8 (b) of the Telegraphers' Schedule, effective May 16, 1928, was modified by the Mediation Agreement to the extent that not less than 72 hours written notice is required to change the rest day of a 7 day position, but this modification does not affect the requirements of the Schedule rule in its application to the changing of positions from 7 to 6 days per week.

Although Article VIII, paragraph 8 (b), Telegraphers' Schedule, specifically refers to "assigned working hours", it has been the long established and accepted practice, except to the extent modified by Article I, Section 1 (a) of the Mediation Agreement, to follow the provisions of the schedule rule when making changes either in the daily assigned working hours or in the assigned number of working days of a position.

It is the carrier's position that the Article VIII, paragraph 8 (b), Telegraphers' Schedule, is controlling and that the Employees' Claim is not supported by Article I, Section 1 (a) of the Mediation Agreement of July 13, 1945.

OPINION OF BOARD: On March 23, 1946, Telegraphers Freeman and McWilliams were assigned to seven day positions in Carrier's telegraph office at Yale, Tennessee, the former with Saturday and the latter with Monday as their respective rest days. On January 24, 1947, Carrier changed the positions

from a seven to a six day week by giving the two employes more than 36, but less than 72 hours written notice of the change. The Organization contends that this violates Section 1 (a) of the Rest Day Rule agreement providing:

"An employe occupying a position requiring a Sunday assignment of the regular week day hours shall be given one (1) rest day without pay in each consecutive period of seven (7) days. The rest day on such position shall be assigned and shall be the same day of the week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours written notice to the employes affected. If such employe is required to work on his assigned rest day, he shall be compensated for such service at the rate of time and one-half with a minimum of eight (8) hours. When the rest day is not Sunday, work on Sunday will be paid for at pro rata rates."

The Carrier contends that Article VIII, Section 8 (b), current Agreement, is controlling. This section provides:

"No change shall be made in assigned working hours without at least thirty-six (36) hours' notice to the employes affected."

The record shows that Telegraphers Freeman and McWilliams were filling positions within the terms of Section 1 (a) of the Rest Day Rule. This being true, the provisions of that rule control them as to any matter therein contained. The rest days of these positions could not be changed without the giving of the 72 hour written notice therein provided. This is so whatever brings about the change of rest days. The positions having been set up in accordance with this rule, they are subject to its provisions until taken from under it.

The Carrier argues that Article VIII, Section 8 (b), current Agreement, has customarily been used in situations such as we have here. Whatever the practice may have been this section, if applicable at all, has been superseded by Section 1 (a) of the Rest Day Rule, as to all assignments made under the latter. The Carrier contends further that there is no change of rest days, —that it is a change from a seven day to a six day position and that no rest day is involved in the latter. We submit, however, that after the proposed change that Saturday and Monday were no longer the rest days of Telegraphers Freeman and McWilliams. Their elimination as such is a change within the meaning of the Rest Day Rule that makes the provision for a 72 hour written notice applicable.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.