

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad Company, that,

(1) The Carrier violated an existing agreement between the Carrier and the Organization when it did not require or permit J. E. Case, regular assigned occupant of third trick position at Poplar Bluff, Mo., assigned hours 11:59 P. M. to 8:00 A. M. to work these hours, September 20, 1946, and,

(2) J. E. Case shall be compensated for eight (8) hours at time and one-half rate September 20, 1946, which is the time he was entitled to work and compensation due him if Carrier had not violated the Agreement as specified in (1).

**EMPLOYEES' STATEMENT OF FACTS:** Claimant J. E. Case was the regular assigned occupant of third trick position at Poplar Bluff, Missouri, September 20, 1946, with assigned hours 11:59 P. M. to 8:00 A. M. His assigned rest day was Friday. (Covered the hours 11:59 P. M. Friday to 8:00 A. M. Saturday. The time service begins defines the day.)

The employee who was regularly assigned to perform service on rest day of Claimant Case was ill and could not work Friday, September 20, 1946.

The Carrier required the occupant of the position with assigned hours 4:00 P. M. to 11:59 P. M. Friday, September 20, 1946 to remain on duty until 4:00 A. M. Saturday September 21, then called the employee due to begin work on his regular assignment at 8:00 A. M. Saturday, September 21, 1946 to actually begin work at 4:00 A. M. September 21, continuing to perform service for the remainder of the third trick assignment to 8:00 A. M. and then perform service on his regular assignment 8:00 A. M. until 4:00 P. M. September 21st.

**POSITION OF EMPLOYEES:** There is an agreement in effect between the parties to this dispute effective June 1, 1942 amended from time to time as to rules and rates of pay. One such amendment as to rules is a Mediation Agreement (Case A-2070) signed at Chicago, Illinois, July 13, 1945 and it is upon this Mediation Agreement that this claim is based.

The pertinent portions of the Mediation Agreement mentioned above as relates to this claim are, Article 1, Section 1, paragraphs (a), (b) and (i) which we now quote:

(a) "An employee 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.

moved up on the second trick position due to the illness of the regularly assigned occupant.

This principle has been recognized and applied by this Division in a number of awards, some of which are Awards 2346, 2695, 2823, 2859, 3049 and more recently 3537. These particular awards did not involve the agreement of July 13, 1945, however, the principle involved is the same, viz., that the pro rata or straight time rate is the rate applicable where the claimant performed no work.

**OPINION OF BOARD:** The present case is identical in principle with that involved in Award 4244. On the basis of the reasoning and awards cited in that award, the claim before us is sustained at the pro rata rate.

**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 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

The Agreement was violated.

#### AWARD

Claim (1) sustained. Claim (2) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1948.