

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Virginian Railway Company.

(1) That the Carrier violated the terms of the prevailing Telegraphers' Agreement when it improperly relieved E. S. Collier, regularly assigned to the second trick telegrapher-clerk position at Goodview, Virginia, on Sunday, September 19, 1948, his assigned rest day, with E. G. Saunders, regularly assigned to the agent-telegrapher position in the same office as the claimant; and

(2) That Telegrapher E. S. Collier shall be compensated at the time and one-half rate for 8 hours on September 19, 1948.

JOINT STATEMENT OF FACTS: On September 19, 1948, claimant E. S. Collier was regularly assigned to a seven day position of second trick Telegrapher-Clerk at Goodview, Virginia, 4:00 P.M. to 12:00 M.N., with rest day Sunday. The rest day was part of a regular relief assignment held by C. L. Weatherly, but on Sunday, September 19, 1948, Mr. Weatherly was not available. The position of second trick Telegrapher-Clerk at Goodview on this date was filled by E. G. Saunders. Mr. Saunders was regularly assigned as Agent-Telegrapher at Goodview, 8:00 A.M. to 4:00 P.M., but was off with permission on this date. No qualified extra employe was available.

POSITION OF EMPLOYEES: An agreement bearing effective date of September 1, 1945 is in effect between the parties to this dispute. The claimant herein occupied a position in the Goodview, Virginia office requiring a Sunday assignment of regular weekday hours and, under Article 6, Section 1 of the prevailing Telegraphers' Agreement, was entitled to one rest day without pay in each consecutive period of seven days. The claim involved in this dispute arose as a result of the method used by the carrier in providing rest day relief for the claimant on Sunday, September 19, 1948, his assigned rest day, with an employe regularly assigned to the position of agent-telegrapher in the Goodview, Virginia office who was off duty on that day with permission of the carrier, under the provisions of Article 16 of the agreement.

Article 6, Section 1 of the current agreement sets forth the method to be followed in providing rest day relief for employes who are entitled to such relief. For ready reference, we quote Article 6, Sections 1 and 2 of the current agreement which are relevant in determining the condition under which the carrier may relieve an employe on his assigned day of rest without violating the terms of such agreement:

"Article 6 — SUNDAY AND HOLIDAY SERVICE

"SECTION 1 — (a) An employe occupying a position requiring a Sunday assignment of the regular week-day hours shall be given one

Nowhere in the schedule agreement is there any provision that an employe who is not required to work shall be paid at the rate of time and one-half. The rate of time and one-half instead of straight time for work on rest days was not put into the agreement for the purpose of increasing the compensation of employes but as a penalty provision to restrict the use of employes on their rest days. Even if claimant Collier should have been called for service on his rest day, which the carrier denies is the case, he would not be entitled to recompense at the time and one-half rate in the present case. The basis of claim for such rate must necessarily be Article 6 and that article specifically states the employe is to be paid at the penalty rate if he "is required to work on his assigned rest day." He was not required to work on his assigned rest day and hence, regardless of the merits of the claim that he should have been used, he would not be entitled to anything except the straight time rate. This viewpoint is in conformity with the views of your Board in your Awards 2346 and 2695.

In conclusion, the Carrier summarizes its case briefly as follows:

1. Claimant Collier's contention that, on his rest day, he should have been called to work the vacancy on another employe's assignment when it was entirely practicable to relieve him for his rest day is directly contrary to the provisions of Article 6, Section 1, paragraph (h).
2. There is no schedule rule which required that Collier be called for the vacancy on the assignment in question.
3. The claim for punitive instead of pro rata pay is contrary to the schedule rules even if the claim were valid that Collier should have been called to service on his rest day.

OPINION OF BOARD: Claimant Collier was the regularly assigned occupant of the second-trick position of Telegrapher-Clerk at Goodview, Virginia, 4:00 P.M. to 12:00 Midnight. This was a seven-day position with Sunday as the regularly assigned rest day.

On Sunday, September 19, 1948, neither the regularly assigned occupant of the relief position or any qualified extra man was available, whereupon the Carrier filled the vacancy with the regularly assigned first-trick, 8:00 A.M. to 4:00 P.M., Agent-Telegrapher.

The claim is that under the circumstances stated Collier had a prior right to work the position on the day in question and that he is entitled to pay for said day at time and one-half.

This is denied by the Carrier, which says that it was obligated to accord Claimant one day of rest, without pay, in each consecutive period of seven days, which it did, and that while Claimant might have been required by it to work on his rest day, in which event he would have been entitled to time and one-half, there was no such demand on the part of the Carrier. The Carrier says, therefore, that the claim ought to be denied, but that, in any event, Claimant could not be entitled to more than the pro rata rate of the regularly assigned occupant of the relief position, whose place was being filled on the day in question.

The principle appears to be well established that on regular seven-day positions with one assigned rest day per week, work on the rest day should be assigned, in the first instance, to the regularly assigned relief man, if there be such and he is available, secondly to an extra man, and, if neither the regular occupant of the relief position or an extra man is available, then to the regular occupant of the position, on an overtime basis. Awards Nos. 4728 and 2980. It is true that Article 6, Section 1(a) of the current Agreement provides that if the regular occupant of the position "is required to work on his assigned rest day" he shall be compensated for said service at the rate of time and one-half but we do not construe the quoted language as making it optional with the Carrier to call another employe for such service to the exclusion of the regular occupant, when there is neither a relief man or an extra man available. The clause, "required to work," has reference to

the circumstances under which the regular occupant shall be entitled to the punitive rate of pay, rather than as lodging a discretion in the Carrier to call an outside man in preference to the regular occupant under a factual situation like the one here presented.

We think the awards of this Division support the Carrier's contention with respect to the redress that should be extended. Had the Claimant worked on the day in question he would, of course, have been entitled to compensation at the time and one-half rate; but he did not work. On this point Award No. 4728 appeals to us to be well-reasoned and decisive. The claim will be sustained for eight hours at the rate of pay applicable to the relief position.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.