

Award No. 4958
Docket No. TE-4991

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

1. The carrier violated the provisions of the Telegraphers' Agreement when and because it paid only straight time rate for services performed by the following employees on the indicated holidays:

J. J. McCrone	July 4, 1947
J. Harrington	September 1, 1947
Paul Rushin	December 25, 1947
Frank Korshalla	" " "
John L. George	" " "
Wm. Gladwin	" " "
Paul Rushin	January 1, 1948
John L. George	" " "

2. The carrier shall now be required to additionally pay each of said employees four hours at straight time rate for each of said indicated days.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of November 1, 1947, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board; **except that Articles 8 and 24 of said Telegraphers' Agreement bear an effective date of March 1, 1945.**

J. J. McCrone, an extra employe, in accordance with the rules governing assignments of extra employes, was assigned to relieve W. H. McCarthy, New Milford, for twelve days July 4 through July 17, 1947, except he did not work on Mondays July 7 and 14 these latter days were the rest days assigned to the position, were included in a regular relief position, and were protected by regular relief employes. McCrone was allowed only straight time rate for services rendered on July 4.

J. Harrington, an extra employe, in accordance with the rules governing assignments of extra employes, was assigned to Regular Relief Position No. 8 in place of R. N. Fancher who was off duty indefinitely account injury.

III

The claims are without merit and should be dismissed or denied.

(Exhibit not reproduced.)

OPINION OF BOARD: The claimants were required to work on the holidays set forth and were compensated for such service on these holidays at the pro rata rate. The Organization claims that they should have been compensated at the penalty rate.

In Award No. 4774 the claim was presented requesting the punitive rate for work performed on a holiday under similar circumstances as exist in this case. The Board therein stated that:

"By the same reason, we think the claim here involving holiday work to be supported by the Rule."

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 Agreement was violated.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of July, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4958

Docket No. TE-4991

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The Delaware, Lackawanna and Western Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In clarification it must be noted that Award No. 4958 deals solely with a claim for the punitive rate for work performed on holidays by extra employees.

In Award 4774 cited in Award 4958 a claim was likewise made for the punitive rate for work performed by extra employees on holidays. The reasoning of the Board in Award 4774 as it relates to the matter of holidays, is applicable. Award 4774, however, also dealt with a claim for work on the rest day of a position under Article 8, Section 1 (a). A reading of Award 4774 reveals that the Board in that case recognized that the "claim to such rate on a holiday is based on Section 1 (j) of the rest day rule". (Section 1, (i) of the Agreement in evidence in this case.) The Board in Award 4774 further stated: "Claim for time and one-half rate for work on holidays must depend on Section 1 (j) already quoted and by the same reasoning we think the claims here involving holiday work to be supported by the Rule."

The condition that an employee must occupy a position for "a consecutive period of 7 days", relates only to the applicability of Section 1 (a). In Award 4774, after quoting Section 1 (a), the Board states as follows: "Extra employees are not there excluded as such. 'An employee' must include an extra employee as much as a regular employee. We think the intended limitation and exclusion of application of the Rule is expressed in that first sentence of the Section, by the phrase 'one (1) rest day without pay in each consecutive period of seven (7) days'. Where an employee does not occupy a position for a 'consecutive period of seven (7) days', Section 1 (a) does not apply to him. Where he does so occupy it, we think Section 1 (a) does apply, and the term 'such employee' in the second sentence following must include any employee who has occupied the described type of position for a 'consecutive period of seven (7) days' whether regularly assigned or an extra. Since each of the three Claimants now before us occupied such positions for more than seven consecutive days, we think they were entitled to the time and one-half rate as provided in the Rule."

Article 8, Section 1 (i) upon which the claim for the punitive rate for work on holidays depends, unlike Section 1 (a), contains no condition that an employee must occupy a position for a "consecutive period of 7 days" and the Board cannot read such a requirement into the provision.

Award 4958 must be interpreted to mean that the punitive rate should be paid to extra employes for holiday work even though the employes do not occupy the position for a consecutive period of seven days.

Referee Peter M. Kelliher, who sat with the Division as a member when Award No. 4958 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of January, 1951.