Award No. 5129
Docket No. TE-5122

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

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

(1) the Carrier violated the terms of the prevailing Telegraphers' Agreement and those of Mediation Agreement A-2070 when on Saturday, April 30, 1949, it gave Telegrapher M. J. Prince, Hodge, Texas, a second rest day within a period of seven consecutive days; and

(2) as a consequence the Carrier shall now compensate M. J. Prince for eight hours at pro rata rate of pay for Monday, April 25, 1949, on which date Claimant was also relieved for a day of rest.

EMPLOYES' STATEMENT OF FACTS: An agreement effective December 1, 1934, supplemented by Mediation Agreement A-2070 (Rest Day Rule) effective March 1, 1945, is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

M. J. Prince, the claimant in this dispute held the position of first trick telegrapher at Hodge, Texas. The regularly assigned weekly rest day of this position to and including April 25, 1949, was Monday.

On Tuesday, April 26, 1949, the Carrier acting alone, advised claimant that his assigned rest day was changed to Saturday commencing April 30, 1949. This meant that claimant was forced to take two rest days in a period of seven consecutive days—Monday and Saturday of the one week.

Claimant made request for payment of one day's pay of eight hours at pro rata rate for work denied him due to Carrier changing rest day and requiring him to take two rest days off without pay in one week. The Carrier acknowledged violation of the Guarantee Rule and paid claimant for eight hours at the then current rate of $1.29 an hour amounting to $10.32 because it required him to be off Monday, April 25, 1949.

Following the payment of this claim and settlement of the dispute in May 1949, the Carrier ordered this payment deducted from the earnings of Claimant, taking the stand that because it had given 72 hours notice of change of rest day that the Guarantee Rule did not apply on rest days and previously allowed pay for April 25, 1949 was not justified.

"We do not at all mean to lay down the doctrine that the carrier has the right to lay off a train dispatcher for any part of his period of assigned duty. We hold only that the parties, having determined in advance that the carrier has the right for good cause to make this particular readjustment, have impliedly agreed to accept the consequence of it, one of which is that a train dispatcher may lose a day from his assignment while such change is being made effective. As there is no specific provision in the rules providing compensation for such loss of time, it must be accepted by the employe as one of the conditions of his employment."

As in the case covered by Award 1814, the fact that there might be changes in rest days that would result in either more or less than one rest day in a seven day period was one of the conditions of the rule under which Mr. Prince was working. He accepted the benefits of the rule, and there is no reason apparent why he should not accept the other conditions which are a necessary part of the rule.

Carrier respectfully submits that the rules involved are plain, and as shown above are not subject to the interpretation which the employes now claim. Interpreting Section 1(a), Article 1, of the Mediation Agreement as supporting the claim would have the effect of setting up an additional and conflicting guarantee rule. The parties to the Mediation Agreement covered the matter of guarantees when they included Section 1(h), and did not leave room for the interpretation now claimed.

Under these circumstances the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant in this dispute held the position of first trick telegrapher at Hodge, Texas. The regularly assigned weekly rest day of this position to and including April 25, 1949, was Monday.

On Tuesday, April 26, 1949, the Carrier, as it had a right to do by authority of its agreement with the Organization, gave Claimant 72 hours' notice that his assigned rest day was changed to Saturday commencing April 30, 1949; the result being that Claimant was off duty for two days in a period of seven consecutive days.

Under the December 1, 1934, agreement employes were guaranteed a minimum of 8 hours' pay within each 24-hour period except on Sundays and named holidays.

Effective March 1, 1945, it was agreed between the parties:

"Section 1-(a) 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 each week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours written notice to the employes affected." (Article 1-Mediation Agreement, Case A-2070).

Paragraph (h) of the foregoing section makes it clear that the guarantee rule of the Agreement was only amended to the extent that Sunday was to be treated as a rest day and the rest day was to be treated as Sunday.

Therefore, at the time in question, Claimant was guaranteed a minimum of eight hours' pay within each 24-hour period, according to location occupied or to which entitled when ready for service and not used, except for one assigned rest day and named holidays.

The Carrier contends, however, that it had the right, on 72 hours' written notice to the employe affected, when service needs required, to change the assigned rest day without penalty. We are unable to agree. The rules in effect at the time (we pass no opinion on present rules) contemplated only one rest day in seven without compensation where a holiday did not intervene. On notice from the Carrier, the assigned rest day from that time forward became Saturday instead of Monday, subject to further change on due notice. The purpose of the notice was served when the employe was advised that his rest day henceforth was Saturday and he no longer had claim to Monday as an assigned rest day.

On the other hand, this Division of the Board has consistently held, where applicable guarantee rules were in effect, that the employe is entitled to be compensated for work which the Carrier causes him to lose due to changing his rest days. See Award 5066. While the cited award construes the rules of another agreement, the principle is the same. In that case, as here, it was argued that, in view of a rule providing for change of relief days when necessary, it is "inconceivable that action presented under one rule would be subject to penalty under another rule of the same agreement." If we were to sustain that argument in this case, and other contentions of the Carrier, we would be acting counter to valid Board precedent and, in our opinion, would be giving greater effect to the notice provisions of March 1, 1945, agreement than permitted by the "guarantee" rule of the December 1934 agreement, as amended, after due consideration is given to paragraph (h), Section 1, Article 1, of the amendatory agreement.

We have noted that paragraph (2) of the claim is for pro rata rate of pay for Monday, April 25, 1949, which, prior to the notice of April 26th, was Claimant's regularly assigned rest day. Since he was accorded his assigned day of rest on Monday, a claim for compensation on that date may be in error, but since the compensation is only an incident arising out of a violation of the agreement, the date of the claim is deemed inconsequential since it is definitely established that he is entitled to an additional day's pay under the agreement. It has been concluded, therefore, that Claimant is entitled to pro rata pay for an additional 8 hours for the seven consecutive day period during the work week in which his assigned rest day was changed.

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 oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 violated the Agreement of December 1, 1934, as amended by supplemental Mediation Agreement A-2070 (Rest Day Rule) effective March 1, 1945.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.