Award No. 5358

Docket No. TE-5365

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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-St. Louis Southwestern Railway Company of Texas; that,

(1) the Carrier violated the terms of the Agreement between the parties when it failed to assign a rest day to the occupants of the positions of Agent at Jonesboro, Arkansas; North Little Rock, Arkansas; Stuttgart, Arkansas; Commerce, Texas; and Greenville, Texas, by requiring such occupants to work and/or be responsible for the conduct of the business for said Carrier at these locations on the seventh day each week subsequent to September 1, 1949, in the same manner and the same degree as existed prior to September 1, 1949; and

(2) the Carrier shall now be required to pay the incumbents of the agency positions referred to in paragraph 1, the difference between what was paid them and that which they should have been paid on the seven-day per week basis from September 1, 1949, until they were assigned Sunday as a rest day effective March 1, 1950.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, implemented by letter agreement dated September 12, 1940, and Supplemental Agreements dated July 28, 1949, and August 1, 1950, which supplemental agreements are effective September 1, 1949, is in effect between the parties to this dispute.

Effective September 12, 1940, six monthly rated agency positions were brought under the scope of the agreement between the parties as shown by paragraph 2 of the following quoted letter agreement:

the claim of the Employes for any payment under Item (3) or for any additional payment under Item (4).

The additional claim of the Employes covered by this dispute results solely from the disagreement during the period involved, and is a claim for payment in excess of that which would have been made had Decision No. 10 been received prior to September 1, 1949, even though the same amount of service had been required.

The Carrier respectfully submits that Decision No. 10 neither provides for nor intends the assessing of any penalty by reason of its provisions not being complied with prior to its issuance. It, as well as the other decisions of the Forty-Hour Week Committee, issued as a result of handling of disputes under Article VI—Disputes Machinery—of the March 19, 1949 Agreement:

"* * * shall be effective as of September 1, 1949."

The fact that the Carrier could not formally assign a rest day "effective September 1, 1949," subsequent to February 15, 1950, when Decision No. 10 was issued does not affect the fact that payments were made to the agents involved for service performed on Sundays on the same basis as if Sunday had been assigned as rest day during the entire period and does not validate Employes' claim for payment in excess of that which would have been due the agents involved for service performed on Sundays during this period solely by reason of the matter being in disagreement and no rest day formally assigned.

The Carrier respectfully submits there was good basis for its opinion that these employes were not covered by the March 19, 1949 Agreement, due to its understanding that these were supervisory agents subject only to the requirement contained in letter agreement, September 12, 1940, providing that the positions be filled from the Telegraphers' rosters.

Under the circumstances outlined, it is the Carrier's position that employes involved have been allowed all payment due them for services performed on Sundays, Septembers 1, 1949-February 28, 1950, and respectfully requests that the claim for additional payment be denied.

OPINION OF BOARD: Prior to September 1, 1949, the holders of the positions referred to in the claim herein were compensated in the form and manner set out in item two (2) of Respondent's Exhibit two (2). On the above date the Chicago Agreement went into effect. The respective parties hereto were unable to arrive at a meeting of the minds with reference to whether the hereinabove mentioned holders came within its terms. The Forty Hour Week Committee in Decision No. 10, rendered on February 15, 1950, held such employes were within the meaning of the Chicago Agreement. The Decision was binding upon the parties and the effective date thereof reverted back to September 1, 1949. It will thus be noted Article 2, Sec. 2 (c) (3) of the Chicago Agreement became Art. 7, Sec. 3 (b) of the August 1, 1950, Agreement of the parties hereto.

The matter we have to do with concerns Article 7 of the last above mentioned agreement, in particular Petitioner under date of April 23, 1950, stated, "It is our position that these employes are entitled to a minimum of eight hours' pay at time and one-half rate for each Sunday subsequent to September 1, 1949, until Sundays was designated as the rest day and a lesser number of hours assigned on that day subject to the agreement. It is our position that the number of hours worked by these agents on Sunday prior to the assignment of Sunday as rest day, unless in excess of eight hours, is not important since they were subject to duty on Sunday the same as on any other day of the week". Respondent, upon establishing Sunday as the rest stated under date of March 1, 1950, "Sunday should be designated as rest day for these positions, and this matter watched closely with view of seeing that only such service as is absolutely necessary is required for these employes on their rest day.

From the above and foregoing we understand that had the hereinabove mentioned rules been placed in effect September 1, 1949, this case would not be before the Board. It will be noted there is no qualification attached to that portion of Article six (6) of the Chicago Agreement wherein it is provided decisions shall be effective as of September 1, 1949. We construe that to mean effective for all purposes. Regardless of what employes considered their status to be during the interval existing between September 1, 1949, and the time Decision 10 was placed into effect and likewise regardless of the position of Carrier with reference to such status, the Schedule is controlling and will be used by this Board as its guide in the determination of disputes. We think the test is, had the Schedule been placed into actual operation on September 1, 1949, would this claim have come into being? The answer is obviously in the negative.

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 Schedule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th days of May, 1951.