

Award No. 5495

Docket No. TE-5517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad Company that:

1. The Carrier violated the agreement between the parties when it failed and refused to pay R. S. Lombard eight (8) hours at the time and one-half rate for eight (8) hours service performed at Wolcottville, September 17, 1950, and

2. The Carrier shall now compensate R. S. Lombard for the difference between the eight (8) hours at straight time rate and eight (8) hours at the time and one-half rate for services performed at Wolcottville, September 17, 1950.

EMPLOYEES' STATEMENT OF FACTS: R. S. Lombard is an extra telegrapher. He relieved the regular assigned occupant of the first trick position at Huntington, Indiana, September 12, 13, 14, 15 and 16, Tuesday, Wednesday, Thursday, Friday and Saturday.

The assigned work week of the position at Huntington is Tuesday through Monday, with assigned working days of Tuesday, Wednesday, Thursday, Friday and Saturday, assigned rest days of the position Sunday and Monday.

Claimant Lombard worked the full assigned working days of the work week of the position at Huntington. After working the entire work week at Huntington, he was required by the Carrier to work eight hours, or one day September 17, Sunday of the assigned rest days at Huntington, the service being performed at Wolcottville. The position at Huntington is a seven day position.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties dated November 1, 1946, amended and revised, as pertains to this claim by the Chicago Agreement of March 19, 1949, to which Agreement both parties are bound through authorization given to their respective representatives participating in the negotiations which produced the aforesaid Chicago Agreement.

The rules applicable to and supporting the position of the claimant in this case are:

Rule 7

"Section 1 (a)—General

The Carrier will establish, effective September 1, 1949, for all employees covered by this agreement, subject to the exceptions con-

Employees worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of this Rule 7.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime." (Underscoring added.)

Extra telegrapher Lombard completed the vacation relief work on Job No. 1 at Huntington on September 16, 1950, and was released from that assignment. Extra telegrapher Lombard was then used in line with his seniority to fill the temporary vacancy on Relief Job No. 26, moving to and working that assignment on September 17, and was then off on Monday and Tuesday, September 18 and 19, the regular days off for that assignment.

The fact Mr. Lombard worked six (6) consecutive days of eight (8) hours each under these circumstances does not entitle him to be paid at the rate of time and one-half for the work performed on the date in question; to the contrary, Rule 7, Section 2, Paragraph (a), one of the provisions to which the work week established by Rule 7, Section 1 (a), is subject specifically excepts work in excess of forty (40) straight time hours in any work week from the overtime provisions provided by that rule where such work in excess of forty (40) straight time hours is performed due to moving from one assignment to another.

The action of the Committee in submitting this case to this Division is, without question, an attempt to set aside those provisions of Rule 7, Section 2 (a), excepting work in excess of forty (40) straight time hours and in excess of five (5) days in a work week, performed as a result of moving from one assignment to another, from the overtime provisions of Rule 7. This Board is without the authority to limit, extend, enlarge or, in any way, change the provisions of the agreement between the parties.

The contentions of the Committee should be dismissed and the claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the interpretation of the exception to the penalty pay requirements for work in excess of forty hours, or five days per week, contained in Rule 7, Section 2(a). Such exception and the difference of opinion thereon are identical to that involved in our Award No. 5494 so that Award is controlling of the decision here.

Here the Claimant, an extra Telegrapher, was utilized to fill two temporary vacancies caused by the vacation of one and the absence of the other regular employees. Moving from one temporary vacancy to another is not equivalent to moving from one assignment to another, under the rules of the Agreement between the parties. Since the Carrier caused the Claimant to work six days in one week, and since such work is not within the exception to the penalty pay requirements, the claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.

DISSENT TO AWARD NO. 5495, DOCKET NO. TE-5517

The dissent to Award 5494 is equally applicable here and by reference thereto is made a part of this dissent.

(s) R. H. Allison
(s) A. H. Jones
(s) R. M. Butler
(s) C. P. Dugan
(s) J. E. Kemp