

Award No. 5532
Docket No. TE-5378

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: It is the claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad that,

(1) The Carrier violated the terms of the Telegraphers' Agreement when it required J. H. Rudy, regularly assigned first trick telegrapher in "XD" office, Decatur, Illinois, to suspend work during regular working hours on May 29 and 30, 1949.

(2) Claimant J. H. Rudy be paid for eight (8) hours at time and one-half rate for May 29, and May 30, 1949, for work denied on these dates.

EMPLOYES' STATEMENT OF FACTS: There were four regularly assigned telegraph positions in "XD" office at Decatur, Illinois at the time of this claim with assignments as follows:

Manager—8:00 A.M. to 4:00 P.M., daily except Sunday and holidays—Rate \$1.48 per hour.

First trick—7:00 A.M. to 3:00 P.M., daily, rest day Sunday—Rate \$1.42 per hour.

Second trick—3:00 P.M. to 11:00 P.M., daily, rest day Wednesday—Rate \$1.42 per hour.

Third trick—11:00 P.M. to 7:00 A.M., daily, rest day Thursday—Rate \$1.42 per hour.

J. H. Rudy was regularly assigned first trick telegrapher but on account of illness of the occupant of the manager's position and the Carrier contending there was no extra telegrapher available who was qualified to fill the Manager's position, Rudy was transferred, by the Carrier, to the Manager's position, which position he worked during the period May 3, 1949 to July 20, 1949, during which time Extra Telegrapher W. K. Stegall worked the first trick position vacated by Rudy.

O. E. Mickelberry was regularly assigned to the relief position which included three rest days assigned in "XD" office, first trick Sunday, second trick Wednesday and third trick Thursday.

stood that an employe can be required to work on his rest day, subject to the rules herein set forth with respect to pay for work performed on such rest day."

Neither Sunday, May 29, nor Monday, May 30, 1949, were assigned work days on the position of Manager in "XD" Office, on which Mr. Rudy was temporarily assigned; therefore, there is no justification whatever for the claim which has been presented on behalf of Mr. Rudy for eight (8) hours at the rate of time and one-half for those days.

It has always been understood that the Carrier had the right to transfer a regularly assigned employe temporarily to another position; and Rule 9, Paragraph (c), of the Agreement, prescribes how a regularly assigned employe, temporarily assigned to another position, will be paid.

J. H. Rudy was not required to suspend work during regular working hours. It has always been understood that a regularly assigned employe, temporarily assigned to another position, would take the conditions of the position to which temporarily assigned. It has not heretofore been the practice, in the application of Rule 9, Paragraph (c), of the Agreement, to permit a regularly assigned employe, temporarily assigned to another position, to return to his regular assignment on days the position, to which he was temporarily assigned, did not work.

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

OPINION OF BOARD: The essential facts in this case are not in dispute.

Claimant was regularly assigned as first trick operator, hours 7:00 A.M. to 3:00 P.M., with Sunday the designated weekly rest day. A relief telegrapher, Mickelberry, regularly relieved claimant on Sunday. Effective May 3, 1949, and continuing to and including July 20, 1949, claimant was assigned to fill the temporary vacancy of manager with hours from 8:00 A.M. to 4:00 P.M., Monday through Saturday, exclusive of seven specified holidays. The hourly rate for this position was \$1.48 or 6 cents an hour in excess of the telegrapher's rate of pay.

Upon the assignment of claimant to the temporary vacancy of manager, one Stegall, an extra telegrapher, was used to fill the claimant's regular position.

On Sunday, May 29, 1949, the relief telegrapher did not work and claimant's replacement, Stegall, worked that day. Monday, May 30, a holiday, was an assigned work day of claimant's position and Stegall worked that day.

The claim is for May 29, 1949 and May 30, 1949. The Organization contends claimant was entitled to work his regularly assigned position on these dates and instead was required to suspend work. It relies on Rules 1, (Scope Rule, 5(d)), (relating to suspension of work and absorption of overtime), 7 (Sunday, Holiday and Rest Day), 9(a), (rate of pay on assignment), 27, (fixing particular rates), and Mediation Agreement Case A-2070.

The Carrier in denying the claim relies on Rule 9, paragraph (c) of the November 1, 1946, Agreement between the parties, which reads as follows:

"When a regularly assigned employe is temporarily assigned to a position paying a lower rate than his regular position, he will be paid at his regular wages. If transferred to a position paying a higher rate, he shall receive such higher rate of pay, and be allowed in addition his expenses when filling such temporary assignment, not to exceed three dollars (\$3.00) per day, if called away from his regularly assigned position."

The basic issue in this case is whether an employe who is transferred to a temporary vacancy takes the hours of the position to which he is transferred. Rule 9 (c) states he takes the rate of the position unless it is lower than his rate, in which case he is paid his regular rate, but is silent on whether he takes the hours and other conditions of employment of the new job.

We will not attempt in this award to settle this basic issue. The specific question we have to decide is whether claimant could, as he contends, control work on three assignments as follows:

- (1) The temporary assignment of Manager. (Monday to Saturday except holidays)
- (2) The temporary vacancy on the regular relief assignment of Mickelberry on Sunday, May 29.
- (3) Work on his regular assignment on a holiday, Monday, May 30.

The Organization has been unable to cite any rule of the Agreement which would permit this result. A sound interpretation of the Agreement requires a reconciliation of the rights of all employes involved. Did not Stegall occupying claimant's regular position have the right to the hours of that position? While we are not required to pass on the question, it seems obvious that using claimant on the days in question would have involved the Carrier in a clear violation of the Agreement as to Stegall.

Considering the Agreement as a whole, we believe the claim is without merit.

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 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 Agreement 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 29th day of October, 1951.