

Award No. 5642
Docket No. TE-5640

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Missouri Pacific Lines in Texas and Louisiana; that:

(a) The Carrier violated the terms of the Agreement between the parties, particularly Mediation Agreement A-2070, when it failed to establish a rest day relief position to cover relief service at Huffman "MK" Yard and Goose Creek; and

(b) In the absence of rest day relief service being afforded to the employes at Goose Creek in conformity with the provisions of the agreements in effect, the regularly assigned employes should have been used for service on their rest days.

(c) All regularly assigned employees who were improperly relieved and deprived of work on their rest day shall be compensated at the rate of time and one-half for each rest day on which service was performed by an unassigned employee as follows:

W. L. Dunkin—1st Trick January 11, 18, 25;
 February 1, 8, 15, 22;
 March 1, 8, a total of
 nine days.

L. I. Fowler—2nd Trick January 12, 19, 26;
 February 2, 9, 16, 23;
 March 2, 9, a total of
 nine days.

M. A. Westbrook—3rd Trick January 8, 15, 22, 29;
 February 5, 12, 19, 26;
 March 12, a total of
 nine days.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute dated October 15, 1940 supplemented by Mediation Agreement A-2070, effective March 1, 1945.

There were two positions at Huffman, one position at "MK" Yard, and three positions at Goose Creek where rest day relief service was required.

The Carrier failed to establish a rest day relief position as provided by

There would be no purpose in having a rule of the Supplemental Agreement which would make it impossible to provide relief at a station where there were less than six of said positions. It certainly could not have been the intent of the parties, by Section 2 of the Supplemental Agreement, to either deprive the employees in seven day positions at stations where there are less than six such positions of their day off or to force the Carrier to create new and unnecessary positions to bring the number up to six."

The case covered by Award 4133 is sufficiently similar to the case under consideration as to justify the suggestion that the reasoning of the Board in that Award should be equally applicable in the instant case, and the claim accordingly denied.

We believe we have shown that it was not practicable to establish a rest day relief position to protect the work here involved, but even if it had been practicable there is nothing whatever in Article I or any other provision of the Agreement that would substantiate the payment sought by these claimants. Where do you find in the rules a provision that if the Carrier does not establish all practicable rest day relief positions, it must use regular employees on their rest days at punitive rate?

The rest day rule provides for relieving employees on their rest days—not for working them. They cannot have the right to be relieved and at the same time the conflicting right to work. When the Carrier relieved these claimants on their rest days it fulfilled completely its obligation to them. A rule that provides for punitive pay if an employe is required to work on his rest day does not give such employe the right to demand, in any circumstances, that he be worked on such day.

The demand for the work is directly at variance with the prior demand for the rest day. The purpose of the rest day rule was to secure relief from work, not the privilege of working extra time at punitive rate. The rule provides for one rest day in seven consecutive days; the Employees should not be permitted to use it as an instrument to secure an additional work day at a premium rate when the Carrier is in position to relieve them for rest.

For reasons stated hereinabove, it is the position of the Carrier that the contention of the Employees is without merit and should be dismissed, and the accompanying claim accordingly denied.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question whether regularly assigned employes were properly relieved by an extra employe on their days off.

Mediation Agreement Case A-2070 Addendum No. 1 to the Agreement, Article 1, Section 1, so far as pertinent, provides:

"(b) Regular relief positions shall be created for the purpose of carrying out the rest day provisions of paragraph (a) and shall be bulletined. Such relief positions shall be assigned six (6) days work per week . . .

Where it is not practicable, because of number of rest days involved or because of location of positions, to cover all rest days on a seniority district by establishment of regular relief assignments of six (6) days, work on rest days not covered by such assignments may be performed by qualified extra men if available . . ."

The record establishes the existence of 6, and perhaps 7, positions within a radius of 26 miles for which it would have been practicable, because of number of rest days involved and because of locations, to create a regular relief position. They were 2 or 3 regular positions at Huffman, one at MK Yard and 3 at Goose Creek.

The Carrier did not at the outset bulletin a regular relief position for these positions; but instead worked a qualified extra employee on the 3 rest days at Goose Creek and provided no relief at all at Huffman and MK Yard.

This step was initially justified upon the ground that telegraphers were scarce and that the extra employee, a woman, would not or could not for personal reasons travel to Huffman and MK Yard. The sufficiency of these reasons is challenged by the Organization, but we pass the point because, as soon as the claim was made, the Carrier bulletined a regular relief position (3 days each at Huffman and Goose Creek) on March 17 but received no bids. The fact that, *ex post facto*, no bid was received is not conclusive; it does not follow that, because no bid was received in March, none would have been received at the outset in January. The action of the Carrier in bulletining the regular relief position speaks louder than its initial determination that it was impracticable to do so. In these circumstances, we find that it was practicable, because of number of rest days involved and because of location of positions, to create a regular relief position and that the Carrier violated the Agreement by assigning the work to the extra employee in January before bulletining the relief position.

The Claimants were entitled to perform this rest day work unless they were properly relieved and they were not (Awards 3979, 4192, 4775). The claim should be sustained at time and one-half if any of the rest days not worked were Sundays (Awards 3979, 4192, 4775, 4841, 5347 and 5559); otherwise at the pro rata rate (Awards 4244, 4841, 5347 and 5559).

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 as above found.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of February, 1952.