

Award No. 5764

Docket No. TE-5777

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Livingston Smith, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE TEXAS & PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Texas and Pacific Railway Company that:

(a) The Carrier violated the terms of the Agreement between the parties when it permitted F. C. Haptonstall, regular assigned occupant of the agent-operator's position at Edgewood, Texas, to improperly perform service as relief operator at Mineola, Texas, on Sunday, September 10, 1950.

(b) The Carrier further violated the terms of said Agreement when it failed to permit or require O. E. Kearley, the regular assigned occupant of the first shift operator's position at Mineola Yard, to work the rest day assignment of this position on that date.

(c) The Carrier shall compensate Operator Kearley for eight (8) hours at time and one-half rate for September 10, 1950, which he would have earned if it had not improperly relieved him by an employe not entitled to perform relief service at Mineola Yard; and

(d) The Carrier shall compensate Agent-Operator Haptonstall for the difference between eight (8) hours at straight time rate, as allowed, and time and one-half rate plus actual necessary expenses, which he should have received for such service.

**EMPLOYEES' STATEMENT OF FACTS:** O. E. Kearley was the regular first shift telegrapher, 8:00 A. M., to 4:00 P. M., at Mineola Yard, Mineola, Texas, a seven-day position, with assigned rest days Saturday and Sunday. Due to illness of the regular assigned relief employe, N. V. Garner, Extra Telegrapher J. D. Haptonstall was instructed to perform the relief duties of this position on Saturday, September 9, and on Sunday, September 10, 1950. J. D. Haptonstall worked this position on Saturday, September 9, but on Sunday, September 10, he made, according to Carrier's explanation, individual arrangements with his father, F. C. Haptonstall, the regular assigned agent at Edgewood, Texas, 21 miles away, a five day position also with assigned rest days Saturday and Sunday to perform the relief work on Mr. Kearley's Mineola Yard position on Sunday, September 10.

As a result of thus being improperly relieved, Kearley submitted a claim for eight hours' pay at the rate of time and one-half for Sunday, September 10, 1950. The claim was rejected by Chief Dispatcher Woodford, Division Superintendent Griswold and the Director of Personnel, Mr. B. C. James.

hours' pay at the time and one-half rate for January 2, 1948, his regularly assigned relief day account being held for service and not used. The claim was denied and we refer to the Opinion of the Board, which reads in part:

"Section 1 (i) provides that 'an employe can be required to work on his rest day' when necessary to the service. If he does work the relief day, he shall be paid at overtime rates. But before he is required to perform such work, there must be no regularly assigned relief operator or extra qualified operator available. Under the facts here, when the extra operator became available, such employe had a right to work the position on Claimant's relief day. He did work it, and the Claimant was relieved from working his assigned rest day. This was in accordance with the contract."

Your Honorable Board made it clear that under the provisions of Section 1, Paragraph (i) (Now Section 1 of Article 6, Paragraph (k)), that a regularly assigned employe could not be required to perform such work on his assigned rest day unless no regularly assigned relief operator or extra qualified operator were available.

Under the facts here, an extra operator was available and was instructed by the Carrier to perform relief service, but he failed to comply with the instructions, although available. Therefore, in this case, while the extra operator failed to work the assignment on the date in question, he was available to work the assignment on the date in question, he was available to do so, which should eliminate the availability of the claimants as neither of them had a right to work the position because of the fact that an extra operator was available to perform such service.

While it is the Carrier's position that neither of the claimants are entitled to compensation, if the Board should render an adverse decision, then we call attention to the fact that the claim on behalf of Telegrapher F. C. Haptonstall for one day at the time and one-half rate was not submitted by the claimant; such claim being submitted to the Carrier by the Organization's General Chairman in a letter dated September 21, 1950, or eleven (11) days after the occurrence.

Article 5 (h) of the Telegraphers' Agreement provides that an overtime claim must be rendered within 48 hours after the service is performed. The claim was not made within the required time on behalf of Telegrapher Haptonstall, therefore, it is barred under the provisions of Article 5 (h).

We respectfully request your Board to deny the claims.

It is affirmed that all data submitted herein in support of the Carrier's position have heretofore been presented to the Organization and are hereby made a part of the question in dispute.

**OPINION OF BOARD:** Claims here concern the allegedly improper performance of relief work by an agent-operator of operator's duties on the rest day of such operator's position.

Claim is made for eight hours at the rate of time and one-half in behalf of Claimant O. E. Kearley, due to failure of Carrier to call him, the regular assigned occupant of the position, to work the rest day assignment on Sunday, September 10, 1950.

An additional claim is made in behalf of the agent-operator for difference between straight time and time and one-half, plus reimbursement for expenses account of performing the rest day work in question.

The Mineola, Texas, Freight Terminal maintains around the clock telegrapher service.

Claimant O. E. Kearley, occupant of one of these positions, with assignment Monday through Friday, with Saturday and Sunday as assigned rest days.

Respondent had created and filled relief positions to work the rest days of regular assignments; however, prior to the date in question (September 10, 1950) the relief operator was ill and the relief operator's position was temporarily occupied by Extra Operator J. D. Haptonstall.

On this day, however, the rest day work of Claimant Kearley was performed by F. C. Haptonstall, agent-operator at Edgewood, Texas. The record discloses that the assumption of rest day work by F. C. Haptonstall, father of J. D. Haptonstall, was without the knowledge, direction or acquiescence of the Respondent.

It is asserted that inasmuch as the work involved was performed by neither the regular relief operator, or the extra operator, the Respondent was of necessity required to call the regular occupant of the position (Claimant Kearley) to perform the work in question.

It is likewise asserted that Agent Operator F. C. Haptonstall is entitled to compensation at the rate of time and one-half plus expenses for performing the work in question.

Respondent counters with this contention that neither of the Claimants were required by them to perform the work at the time and place in question, within the meaning of paragraph (j) and (k) of Section 1 of Article 6.

The Rest Day Rule has been uniformly interpreted by this Division as requiring rest day work to be performed (1) the regularly assigned relief operator (2) extra operator, if available, (3) the regular occupant of the position, in the order named.

In the instant case the regularly assigned relief operator was ill. Claimant F. C. Haptonstall was not an "extra operator" as such. The extra operator who should have performed the work was J. D. Haptonstall. When he failed or refused to work on the date in question, Claimant Kearley was entitled to and should have been called to perform this rest day assignment.

The request for compensation at the premium rates in the case of Claimant Kearley is without merit. Since he did not work on the Sunday in question the claim should be allowed on a pro rata and not on a punitive basis.

Claimant F. C. Haptonstall was agent telegrapher at Edgewood, Texas. He substituted for his son, J. D. Haptonstall, extra operator, at Mineola, Texas, without the knowledge or consent of the Respondent. He was not directed to, nor did he have a right to perform the work in question. The voluntary performance of work under these circumstances can in no way be said to constitute grounds for the imposition of premium pay as requested. The demand for reimbursement for expenses falls in the same category.

**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 to the extent indicated above.

## AWARD

Claim of O. E. Kearley sustained on a pro rata basis.

Claim of F. C. Haptonstall denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 21st day of May, 1952.

## DISSENT TO AWARD 5764, DOCKET TE-5777

The Carrier did not violate the Agreement as alleged. It complied literally with the terms thereof and arranged for an extra telegrapher to protect the position on the day in question.

The Opinion states:

"The record discloses that the assumption of rest day work by F. C. Haptonstall, father of J. D. Haptonstall, was without the knowledge, direction or acquiescence of the Respondent."

yet a penalty is assessed as a result of the conniving of these two employees, father and son.

The injustice of such a penalty is emphasized by the following letter in the record from F. C. Haptonstall:

"Last Sunday Sept 10, I worked at Mineola Yard First Trick in place of my son Jerry, who was assigned the extra work account Regular Swing Man being sick.

"Mr. Woodford or none of the other Dispatchers told me to work. I asked Jerry to let me work for the practice and to see some of the old friends that I used to work with, and he could get the pay for this work.

"Mr. Kearley came down to the office and said that he was going to turn in a day for this work, account me being there, and I explained the reason that I was there but he turned in time for this in the meantime.

"I did not think that there would be anything wrong with me sitting in at Mineola Yard for a day to brush up on Train Orders, and I didn't do this with the intentions of causing anybody any trouble, I wish to take all the blame for this mistake and in the future I won't take any chances of causing any violations, and I am not going to ask any pay for this day whatever."

The claim should have been denied in its entirety.

/s/ A. H. Jones

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp