

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad; that,

(1) The Carrier violated the Agreement between the parties when it failed and refused to use Claimant D. J. Jellison, occupant of relief position F-16, to perform required service on position at "FO" office, Fort Wayne, 7:30 A. M. to 3:30 P. M., Monday, January 2, 1950, a holiday; and

(2) The Carrier shall compensate claimant for eight (8) hours at the time and one-half rate for Monday, January 2, 1950.

EMPLOYES' STATEMENT OF FACTS: At Fort Wayne, on January 2, 1950, there existed four full five-day assignments, plus one relief assignment, used four days in this office, one day elsewhere; 1st trick operator, assigned hours 7:30 A. M. to 3:30 P. M.; work week, Tuesday through Monday; working days Tuesday, Wednesday, Thursday, Friday and Saturday; assigned rest days, Sunday and Monday. Relieved on rest days by Claimant Jellison. The position is a seven-day position.

Second trick operator, assigned hours 3:30 P. M. to 11:30 P. M.; work week Thursday through Wednesday; working days, Thursday, Friday, Saturday, Sunday and Monday; rest days, Tuesday and Wednesday. Relieved on rest days by Claimant Jellison. The position is a seven-day position.

Third trick operator, assigned hours 11:30 P. M. to 7:30 A. M.; work week, Tuesday through Monday; working days, Tuesday, Wednesday, Thursday, Friday and Saturday; rest days, Sunday and Monday. Relieved on rest days by occupant of relief position F-17, not by the claimant. The position is a seven-day position.

Middle or 4th trick operator, assigned hours 8:00 A. M. to 4:00 P. M.; work week, Monday through Sunday; working days, Monday, Tuesday, Wednesday, Thursday and Friday; rest days, Saturday and Sunday. Relieved on one rest day Saturday by the occupant of Position No. 17 and the position is not filled on Sunday. The position is a six-day position.

sumed by another regularly assigned in conjunction with his other duties that 'the condition of business' is such as to authorize relieving the employe on a legal holiday.

In our opinion the carrier's version of the interpretation of the phrase, 'as much as the condition of business will permit' is the correct one. It seems reasonable to state that the condition of business will permit the relieving of employes on legal holidays whenever the duties of such employes are light and can be assumed by others who cannot be relieved because of the nature of their duties. On the other hand it does not seem reasonable that the phrase was incorporated into this rule merely for the purpose of allowing the relief of employes on holidays only when there were absolutely no duties with reference to their particular positions.

Rule 8(a) read also in conjunction with Rule 10 seems clearly to be intended to allow to the employes as much time off on legal holidays as it is possible so to do. It is quite apparent that rule 8(a) imposes a requirement upon the carrier of following a policy of relieving employes on holidays whenever it can be done without disrupting the condition of business. The rule then imposes a duty upon the carrier and necessarily must also grant to the carrier the authority of acting under this rule to carry out the policy which it is intended to provide. In our opinion the authority to relieve the employe on a holiday is indispensable to the carrying out of the policy embodied in rule 8(a) and that this authority exists regardless of whether particular individual employes might in some cases rather work on legal holidays than to be relieved. The rule is a rule obtained for the benefit of the employes as a whole. Obviously such a rule cannot be carried out in practice if in some individual case the matter of relieving the employe on a legal holiday is left to the will and whim of the employe.

In this case there is no question that there were some duties to be performed on the July 4th in question. However, there seems to be little doubt that these duties could easily be handled by the regularly assigned agent.

It is our conclusion that as these duties could be handled by the regularly assigned agent 'the condition of business' clearly would permit the relieving of G. O. McDonald, the employe involved in this case, and therefore, McDonald has no claim for compensation for the day on which he was relieved."

The carrier submits that the employes cannot claim holiday work when their services are not required nor payment in lieu thereof, much less eight hours at the punitive rate when no service is performed.

All data submitted in support of carrier's position have been presented to the other party and made a part of this particular question.

OPINION OF BOARD: Claimant D. J. Jellison at the time this dispute arose occupied a relief position designated as F-16 at Fort Wayne. Assigned hours for this position were Sunday and Monday 7:30 A. M. to 3:30 P. M., Tuesday and Wednesday, 3:30 P. M. to 11:00 P. M. and on Saturday he relieved a car clerk elsewhere. Thus his regular rest days were Thursday and Friday.

The controversy here involved is concerned with work on Monday, January 2 which was a holiday since New Year's Day fell on Sunday. As will be observed from the above schedule of hours claimant was regularly scheduled to work on Monday between the hours of 7:30 A. M. and 3:30 P. M. There was another position which worked Mondays regularly, known as the middle or 4th trick position with assigned hours 8:00 A. M. to 4:00

P. M. On the date in question January 2, 1950, the occupant of the third trick position with assigned hours 11:30 P. M. to 7:30 A. M. was instructed to work until 8:00 A. M. on an overtime basis. Thus he performed 30 minutes work which would ordinarily have been performed by claimant as the first 30 minutes of his trick. Then Carrier required the 4th or middle trick occupant to begin work at 8:00 A. M. on January 2 and work through his regular shift hours to 4:00 P. M.

It is clear from the record that claimant's position did work on January 2, 1950, at least for the period between 7:30 A. M. and 8:00 A. M. Since work was required for this period it belonged to claimant since he was the only one who was assigned to work between these times.

Under the terms of Rule 5-A (1) this claim has merit and should be sustained. The Rule reads as follows:

"Employees occupying positions requiring a Sunday assignment of the regular weekday hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required holiday service is on their regular positions or on other work."

The facts of the instant case meet the test posed in the Rule. Authority for such a conclusion is to be found in Third Division Awards 4775 and 5580.

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 oral hearing thereon;

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: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of June, 1952.