Award No. 6408
Docket No. TE-6289

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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 Company; that,

1. The Carrier violated the agreement between the parties to this dispute when it improperly compensated J. L. Treece on certain days for services performed off his regular assignment; and,

2. The Carrier shall compensate the Claimant, J. L. Treece, for the difference between the straight time rate paid and the time and one-half rate due for services performed on his assigned rest days during the period, January 24, 1950 to March 1, 1950, i.e., February 2, 3, 9, 10, 16, 17, 23 and 24; and

3. The Carrier shall compensate the Claimant, J. L. Treece, for eight hours at the straight time rate for each day he was suspended from duty on his regular assignment between January 24, 1950, and March 1, 1950, i.e., January 31, February 1, 7, 8, 14, 15, 21 and 22, 1950.

EMPLOYES' STATEMENT OF FACTS: Claimant was regularly assigned to position No. F-14 working Saturday and Sunday as First Trick Telegrapher, West Wayne: Monday and Tuesday as second trick Assistant Ticket Agent, Ft. Wayne; Wednesday as third trick Telegrapher, West Wayne. His assigned rest days were Thursday and Friday.

January 24, Thursday, the claimant was instructed by the Carrier to begin work as third trick Assistant Ticket Agent at Ft. Wayne. He was held on this assignment at third trick, Ft. Wayne until March 1, 1950, on which date he was returned to his regular position, No. F-14.

For the first two rest days of Thursday, January 24, and Friday, January 25, claimant was compensated at the time and one-half rate. He was not so compensated on each succeeding Thursday and Friday, i.e., February 2, 3, 9, 10, 16, 17, 23 and 24.

On his regular assignment he worked each Tuesday and Wednesday but in assuming the position of third trick assistant ticket agent at Ft. Wayne by orders of the Carrier, he was denied the right to work on these days because they were the assigned rest days of the position he had been

into a new contract all interpretations of the old agreement are carried forward into the new unless there is a declared intent to the contrary." There are many other awards of this Division supporting this same principle. Rule 11 (b) of the agreement dated July 24, 1950, made for the purpose of conforming the agreement signed April 23, 1948, and effective June 1, 1948, with the 40-Hour Week Agreement was carried forward verbatim from the old agreement, no amendment being required, negotiated, intended, or declared.

Awards 2511, 3132, and 3786, of this Division uphold the position of Carrier that Rule 11 (b) is here controlling and that the rule cited by the Organization is not applicable under the circumstances present in this case.

The Carrier has conclusively shown that:

1. Rule 11 (b) was not changed by the adoption of Rule 4½, II, A (1) as is shown by Rule 4½, I.

2. The assigned rest days of the Claimant during the period of the claim were the rest days of the position of third trick Assistant Ticket Agent.

3. The Claimant is attempting to control not only the rest days of the position of third trick Assistant Ticket Agent to which he was properly assigned under the Rules, but also the rest days of position F-14, assigned to and occupied by R. L. Heath. Thus, he is attempting, for penalty purposes, to control two assignments and obtain the benefits of two different assignments at the same time, yet the propriety of the assignment of Claimant Treece to the position of Assistant Ticket Agent under the rules has not even been questioned or protested.

4. Previous awards enumerated above support the position of the carrier that there is no merit in this claim.

5. The clear and unambiguous rules of the agreement, unchanged with respect to the situation here encountered, unchallenged as to past practice and interpretation, require a denial of the claim in its entirety.

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: Our Award 4592 denied a similar claim based upon rules similar to those existing here prior to the adoption of the Forty Hour Week Agreement, effective September 1, 1949, upon the basis that a regularly assigned employe diverted from his regular position and temporarily assigned to another position for emergency or relief work was then entitled to the rest days of the position occupied, not the rest days of the position from which diverted, because rest days are a condition of and attach to a position.

On this property the practice prior to September 1, 1949, was in conformity therewith.

It is the contention of the Organization that the claims are valid now because provisions of the Forty Hour Week Agreement, particularly Rule 4½, II, A (1), alter the situation. We think not. Part I of that rule provides in part as follows:

"This rule is for the sole purpose of determining the compensation for employes who are required to work on their assigned rest days. It is not to be used to create, enlarge or take away any rights or obligations which the carrier or the employes may have by virtue of other rules in this agreement, * * *."

Thus it is clear that part II A (1) was not intended to change the rights or obligations of either party under Rule II (b) and when that part II makes provision for payment of time and one-half to "employes required to perform service on their assigned rest days", it is referring to the rest days of the position to which the employe is then assigned even though such assignment is merely a temporary relief or emergency assignment under Rule 11 (b).

Hence 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1953.