

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Lines West of Buffalo)

STATEMENT OF CLAIM: Case No. 1

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay A. D. Hederi eight hours at the time and one-half rate for eight hours' service performed at Nitro, W. Va., September 22, 1951; and

(2) The Carrier shall now compensate A. D. Hederi for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at Nitro, W. Va., September 22, 1951.

Case No. 2

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay J. E. Bloede eight hours at the time and one-half rate for eight hours' service performed at "BO" Tower, Sandusky, Ohio, August 15, 1951; and

(2) The Carrier shall now compensate J. E. Bloede for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at "BO" Tower, Sandusky, Ohio, August 15, 1951.

Case No. 3

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the terms of the agreement between the parties when it failed and refused to compensate Telegrapher D. O. Neal at the rate of time and one-half for work performed on Monday, November 6,

1951, on second shift, Sandusky and, work performed on Tuesday, November 7, 1951, on third shift, Sandusky, after he had completed a full work week of forty hours.

(2) That Telegrapher D. O. Neal shall now be paid the difference between the straight time rate at which he was compensated, and the rate of time and one-half to which he was entitled, under the provisions of the agreement between the parties.

Case No. 4

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay C. H. Finney eight hours at the time and one-half rate for eight hours' service performed at "AR" Tower, Amherst, Ohio, June 21 and 22, 1951; and

(2) The Carrier shall now compensate C. H. Finney for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at "AR" Tower, Amherst, Ohio, June 21, and 22, 1951.

Case No. 5

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay Mrs. E. L. Casebolt eight hours at the time and one-half rate for eight hours' service performed at Shorr, West Va., October 14 and 15, 1951; and

(2) The Carrier shall now compensate Mrs. E. L. Casebolt for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at Shorr, West Virginia, October 14 and 15, 1951.

Case No. 6

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay R. J. Gentis eight hours at the time and one-half rate for eight hours' service performed at Schneider, Oct. 4, 1951 and R. J. Mailloux at Sheff, October 21, 1951; and

(2) The Carrier shall now compensate R. J. Gentis for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at Schneider, October 4, 1951 and R. J. Mailloux at Sheff on October 21, 1951.

Case No. 7

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay R. J. Mailloux eight hours at the time and one-half rate for eight hours' service performed at Sheff and Gibson, Indiana, November 6 and 23, 1951; and

(2) The Carrier shall now compensate R. J. Mailloux for the difference between the eight hours at straight time rate and eight hours at the time and one-half rate for services performed at Sheff, November 6, and at Gibson, Indiana, November 23, 1951.

Case No. 8

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay M. C. Conger eight hours at the time and one-half rate for eight hours service performed at "JU" Oak Harbor on the sixth and seventh days of his work week, July 13 and July 14, 1952; and

(2) The Carrier shall now compensate M. C. Conger for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for the services performed at "JU" Oak Harbor, July 13 and July 14, 1952.

Case No. 9

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay J. A. Landgraf eight hours at the time and one-half rate for eight hours service performed at "BC" Elkhart, August 31, 1952; and

(2) The Carrier shall now compensate J. A. Landgraf for the difference between the eight hours at the straight time rate and eight hours at the time and one-half rate for the services performed at "BC" Elkhart, August 31, 1952.

Case No. 10

Claim of the General Committee of the Order of Railroad Telegraphers one the New York Central Railroad, Lines West of Buffalo, that

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay R. J. Williams eight hours at the time and one-half rate for eight hours service performed at Hobson, November 29, 1952 the seventh day of his work week, and

(2) The Carrier shall now pay Claimant R. J. Williams for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for the services performed at Hobson, November 29, 1952.

Case No. 11

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that

(1) The Carrier violated the agreement between the parties when it failed and refused to pay R. J. Mailloux eight hours at the time and one-half rate for service performed at Sheff Nov. 15, 1952, and

(2) The Carrier shall now compensate R. J. Mailloux for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for services performed at Sheff, Nov. 15, 1952.

Case No. 12

Claim of the General Committee of the Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay R. J. Mailloux eight hours at the time and one-half rate for eight hours service performed at Handy, October 14, 1952, the seventh day of his work week; and

(2) The Carrier shall now compensate Claimant Mailloux for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for the services performed at Handy, October 14, 1952.

Case No. 13

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the agreement between the parties when it failed and refused to pay Claimant R. J. Williams eight hours at the time and one-half rate for eight hours service performed on third trick "BK" Office December 31, 1952; and

(2) The Carrier shall now compensate Claimant R. J. Williams for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for the services performed on 3rd trick "BK", December 31, 1952.

Case No. 14

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay R. J. Williams eight hours at the time and one-half rate for services performed at Nitro, January 12, 1953; and

(2) The Carrier shall now compensate Claimant Williams for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for services performed at Nitro, January 12, 1953.

Case No. 15

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay Claimant Vera Wood at the time and one-half rate for services performed at "CF" Tower, Linndale, May 17, 1952, and

(2) The Carrier shall now compensate Claimant Wood for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for services performed at "CF" Tower, Linndale on May 17, 1952.

Case No. 16

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Lines West of Buffalo, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to pay Claimant Vera Wood eight hours at the time and one-half rate for services performed at "BR" Tower June 28, 1952, and

(2) The Carrier shall now compensate Claimant Wood for the difference between eight hours at the straight time rate and eight hours at the time and one-half rate for services performed at "BR" Tower, Linndale, June 28, 1952.

EMPLOYES' STATEMENT OF FACTS: Case No. 1

A. D. Hederi was an extra employe on the dates involved in this claim.

By order of the Carrier he was used to relieve the regular assigned occupant of a position within the scope of the Agreement between the parties at Dunbar.

The occupant of the position relieved had an assigned work week of Monday through Sunday. Working days were Monday, Tuesday, Wednesday, Thursday and Friday. Rest days were Saturday and Sunday. Claimant worked Monday, September 17, Tuesday, 18th, Wednesday, 19th, Thursday, 20th, Friday, 21st, and was under the Rules, due rest days of Saturday, September 22nd and Sunday, September 23rd.

Claimant was not permitted the two rest days earned. He was by orders of the Carrier required to perform eight hours service at another location, Nitro, on Saturday, the 22nd. The work at Nitro was on the sixth day of the work week of the Claimant, the first day being Monday, the 17th.

Case No. 2

J. E. Bloede was an extra employe on the dates involved in this claim.

By order of the Carrier he was used to relieve the regular assigned occupant of a position within the scope of the Agreement between the parties at Port Clinton.

The occupant of the position relieved has an assigned work week Friday through Thursday consisting of working days Friday, Saturday, Sunday, Monday, Tuesday, with rest days of Wednesday and Thursday. Claimant assumed the work week of the regular employe relieved. Claimant worked Friday, Aug. 3rd, Saturday, Aug. 4th, Sunday, Aug. 5th, Monday, Aug. 6th, Tuesday, Aug. 7th, was permitted to enjoy the two rest days Wednesday, Aug. 8th and Thursday, Aug. 9th. Claimant worked Friday, Aug. 10th, Saturday, Aug. 11th, Sunday, Aug. 12th, Monday, Aug. 13th, Tuesday, Aug. 14th, and was not permitted the rest day of Aug. 15th but instead, by order of the Carrier, was required to perform 8 hours service on the sixth day of his work week at Sandusky.

Case No. 3

D. O. Neal was an extra employe on the dates involved in this claim.

By order of the Carrier he was used to relieve the regular assigned occupant of a position within the scope of the Agreement between the parties at Elyria Coal Dock.

The occupant of the position relieved has an assigned work week Thursday through Wednesday consisting of work days Thursday, Nov. 1, Friday, Nov. 2nd, Saturday, Nov. 3rd, Sunday, Nov. 4th, Monday, Nov. 5th, with assigned rest days of Tuesday, Nov. 6th and Wednesday, Nov. 7th. After working the five working days of the position Nov. 1 to 5 inclusive the claimant was denied the privilege of enjoying the two assigned rest days of the position being occupied by him, but, instead was by order of the Carrier required to perform 8 hours service on the sixth and seventh days of his work week at Sandusky, November 6 and November 7.

Case No. 4

C. H. Finney was an extra employe on the dates involved in this claim.

The purpose of this exception was to relieve the carrier from the obligation to pay the overtime rate in cases where the seniority rules of the agreement require the carrier to use a particular employe on more than 5 days in a week. That is exactly the situation here. Each of the claimants was the senior available extra employe and each was required to be used on a second vacancy at the time he became available by reason of having completed a prior assignment. Under these circumstances the exception of the rule permits the carrier to pay only the straight time rate.

Upon whatever basis the claims are prosecuted, they are demonstrated to be invalid and they should be denied.

All information contained herein has been made available to the organization.

OPINION OF BOARD: Claimant was an extra employe on the dates involved in this claim. He was used to relieve on a position the occupant of which was assigned to work Mondays through Fridays with Saturdays and Sundays as rest days. Claimant worked Monday, September 17, 1951, through Friday, September 21, 1951. Claimant was required to work on Saturday, September 22, 1951, on another position at another location and was paid the straight time rate therefor. The claim is for the time and one-half rate less the amount paid for the Saturday work.

This case involves a seven day position. The 40 Hour Work Week Agreement requires that extra employes be given two rest days in each work week the same as regularly assigned employes. With reference to the rest days of extra employes, Article 10, Section 1(h) provides:

"To the extent extra men may be utilized under applicable agreement rules, their days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days of that assignment."

It becomes important, in view of the foregoing rule, to determine when a work week begins and ends in order to determine when an extra employe assumes the rest days of a regular employe. In a consideration of the rules governing this problem it must be borne in mind that the terms "extra" and "unassigned" were not intended to be synonymous. See Decision No. 2, Forty-Hour Week Committee.

It is provided in Article 21(b), current Agreement, in part as follows:

"The senior extra employe cannot claim extra work in excess of 40 hours in his work week if a junior extra employe who has had less than 40 hours' work in his work week is available. An extra employe occupying an unfinished extra assignment will not be considered idle for the purpose of this paragraph on holidays or on designated rest days."

The rule makes it clear that the 40 hour work week applies to extra employes. The work week of an extra employe must be determined in order to fix his rest days as contemplated by the 40 Hour Work Week Agreement. In the present case the claimant was being used in the place of a regularly assigned employe and assumes the conditions of the regular position, including the work week and the rest days thereof. The beginning of the work week for unassigned employes as defined in Article 10, Section 1(i), current Agreement, has no application to extra employes doing the work of regularly assigned employes. It seems clear therefore that an extra employe who works all five days of the work week of a regular assigned employe is entitled to the two rest days incidental to that work week, and, if he is required to work on the rest days thereof, he is entitled to be paid for the rest day work, namely, the time and one-half rate.

The foregoing conclusion appears to be consistent with Decision No. 31 of the Forty-Hour Week Committee. It is clear from that decision that an extra employee who has worked 40 hours in his work week may not claim extra work for that week as against an extra employee who has had less than 40 hours work in his work week. In other words, where an extra employee has worked the five days of his work week, he is required to take the two rest days the same as a regularly assigned employee, and if he is required to work on those rest days, he is entitled to the time and one-half rate therefor.

The Carrier relies upon certain agreed upon interpretations set out in the form of examples which are set forth in the current Agreement as applicable to Article 10. It is clear that Examples 1, 3 and 4 are in no manner applicable to the case before us or inconsistent with our holding herein. Example 2 appears to conform to our holding if, and only if, the extra employee works on the rest days of the position on which he has worked 40 hours in the same work week. This is not inconsistent with our holding that an extra employee who has worked 5 eight-hour days in the work week of a regularly assigned position, has earned the two rest days of that position and, if worked on that position or at any other work on such rest days, he is entitled to be paid for it on the basis of rest day work.

Cases 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are similar in their facts and in the principle to be applied. An affirmative award is required in each of the cases set out in the docket.

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 to each case stated.

AWARD

Claims in Cases 1 to 16, inclusive, sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1955.