

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad:

1. That Carrier violated the terms of the agreement between the parties when, on October 11, 1950, it failed to compensate L. T. Wallace at the rate of time and one-half for 8 hours' work at Nowata, Oklahoma, on a rest day and instead paid him at the pro rata rate of the position worked.
2. That Carrier violated the terms of the agreement between the parties when, on November 13, 1950, it failed to compensate L. T. Wallace at the rate of time and one-half for 8 hours' work performed at Nowata, Oklahoma, on a rest day, and instead paid him at the pro rata rate of the position worked.
3. That Carrier be required to pay L. T. Wallace the difference between the pro rata rate and the rate of time and one-half for the 8 hours' work performed on October 11, 1950.
4. That Carrier be required to pay L. T. Wallace the difference between the pro rata rate and the rate of time and one-half for the 8 hours' work performed on November 13, 1950.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Missouri Pacific Railroad Company, hereinafter called Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers' or Employees'. The Agreement became effective September 1, 1949. Copy of Agreement has been filed with this Board and is by reference included as though copied word for word.

Claims 1 and 2 were handled on the property as separate and distinct claims, but since the claimant is the same in each case, and the issues are identical, both are included for settlement in this one submission.

L. T. Wallace is an extra telegrapher on the Central Seniority District. His duties require him to work at any point on the division in relief service where directed by Carrier. Normally this work would be to fill a temporary vacancy due to the absence of the regularly assigned employee.

Claim No. 1 arose out of the situation where the Carrier directed the claimant to, and he did, assume the position of third shift telegrapher. At

employee for one of the five days of his work week. Permitting an employee to make six or seven days in one week when he might only make two or three days in the next is not at variance with the principle of spreading the work which, although not expressly stated, seems to be the underlying motive of the Employees in this dispute. It is not our thought that spreading the work involves reducing the senior man to four days in his work week in order to give a junior man one day, which is exactly what would have occurred in each instance here involved if the Employees' construction of the rule had been followed.

While the claimant in this case might feel duly gratified if he gets four additional hours' pay for each of the dates involved, we are of the opinion that he would not feel very good about being deprived of work entirely on such days in similar cases in the future if the Carrier follows the contentions of the Organization and refrains from using him in order to avoid the penalty that would be attached to such service because such days are held to be rest days for him.

With respect to Awards 5494 and 5495, it is the position of the Carrier that they have no controlling effect here because they do not involve the same issue. In the cases covered by those Awards the claimants were required to work **more than** five days in the work week by moving from one position to another for extra work. The opinions of the Awards were interpretations of what is Rule 10(h) of the Agreement here involved. The Employees have not invoked this rule in the instant dispute and it could not apply in this case because it deals exclusively with service in excess of 40 hours or five days in a week, whereas the claimant here before you did not work any such excess time at all. The claim here is for time and one-half for a fifth day of work on the theory that it was a rest day. Furthermore we hold that Awards 5494 and 5495 were palpably in error for the reasons given in the dissents thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims here made are identical with those made in Award 6970. For the reasons stated in that award, the claims are valid.

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.

AWARD

Claim 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.