

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORTHWESTERN PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northwestern Pacific Railroad, that:

1. The Carrier violated the terms of the agreement between the parties when on December 29, 1952, it permitted Telegrapher-clerk W. J. Harvill, who had been on leave of absence, to return to duty without giving the required advance notice of his return to service and without giving W. W. Tait the required advance notice of the return of Mr. Harvill; and

2. As a result of the violation W. W. Tait shall be compensated under the appropriate rules for 8 hours at the applicable rate for December 29, 1952.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing an effective date of August 1, 1945 (re-printed September 1, 1951, including revisions). A copy of this agreement is on file with the Board and is hereby made a part of this dispute.

On the date of this claim there were three shifts of Telegrapher-clerks at Santa Rosa, California, working around the clock eight hours a day under the supervision of the Agent. On December 26, 1952, the first, second and third shift Telegrapher-clerks at this station received the following message:

"Santa Rosa, Cal.
December 26, 1952

Telegraphers—Puckett
Tait
Jones

Have following wire from WMB 150 P.M. Dec. 26th, 1952:

'Have Operators concerned work rest days until Harvill reports for duty. D-828.'

Kindly ack.

A. L. REED, Agent"

"We have, therefore, concluded that the Agreement has not been violated as alleged."

Like in the above award, claimant was instructed to work his rest day, the only difference being that instead of an extra operator becoming available to perform the work on his rest day, the regularly assigned swing man returned to duty and worked the job. The claimant was relieved from working his assigned day of rest which is in accordance with the provisions of the Telegraphers' Agreement.

CONCLUSION

Carrier avers that the claim in this docket is without basis or merit and therefore respectfully submits that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant W. W. Tait is regularly assigned as a Telegrapher-Clerk at Santa Rosa, California, working 2:00 P. M. to 10:00 P. M., with Mondays and Tuesdays as assigned rest days. W. J. Harvill was regularly assigned to a rest day relief position, which included the two rest days of Claimant Tait's position. On December 24, 1952, Harvill was granted sick leave. Since no extra telegrapher was available to take Harvill's place, the regular employees, including Claimant, were instructed to work their rest days until Harvill's return.

At 11:20 A. M. December 29, 1952, Harvill presented a medical release. Carrier notified Claimant Tait, by telephone, at 11:30 A. M. on the same day that Harvill was returning to work that afternoon. Official notice reached Tait ten minutes before the start of his 2:00 P. M. shift. Under Rule 23, (a), 3, Tait made claim for pay for the eight hours for December 29, 1952.

Paragraph 3 of Rule 23 (a) provides that "In the event an assigned employe returns from sick leave, he shall give the Carrier sufficient advance notice of such return to permit the Carrier to give the employe temporarily assigned to the position, twenty-four (24) hours advance notice of his displacement . . .". And Rule 23 (d) requires employees returning from leaves of absence to give Carrier the same twenty-four (24) hours' notice.

We can only interpret this to mean that Harvill was obligated to give the Carrier a minimum of twenty-four hours advance notice before resuming his assignment. And if the Rule is to have the obvious effect intended, Carrier is obligated to give similar timely notice to the employee who has relieved the excused employee. Any other interpretation would render this rule meaningless.

Nor is this rule applicable only to temporary extra men. While the last sentence in paragraph 3 of Rule 23 (a) makes special mention of and provision for the "temporarily assigned" employee, this sentence applies only where such a temporarily assigned employee is involved. It in no way qualifies the twenty-four hours' notice required for all employees who have been substituting for those who have been on leave.

It is our understanding that Claimant's request is limited to the pro rata rate for the 8-hour shift on December 29, 1952, the date on which he failed to receive timely notice that his services would not be required. Since it is our conclusion that Claimant Tait should have been permitted to work the assignment on the date in question, his claim must be sustained.

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;

That Carrier did not comply with the Agreement, Rule 23 (a).

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1955.