

Award No. 7981
Docket No. TE-7671

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

A. Carrier violated the provisions of the Agreement between the parties hereto when it failed and refused to properly compensate the employees listed in paragraph B-(1) to (8), inclusive, of this claim.

B. Carrier shall now pay each of the following employees on the dates listed for eight (8) hours, at the pro rata hourly rate of pay applicable at the stations named, in addition to any other compensation previously paid for such service on these dates:

(1) V. Wimer, Printer Machine Operator-clerk, Bakersfield, California, Labor Day, September 6 and Thanksgiving Day, November 25, 1954.

(2) E. Ray, Agent, Armona, California, Labor Day, September 6 and Thanksgiving Day, November 25, 1954.

(3) H. J. Rooney, Agent, Valley Springs, California, Labor Day, September 6 and Thanksgiving Day, November 25, 1954.

(4) J. T. Oakes, Agent, Clovis, California, Labor Day, September 6, 1954.

(5) J. E. Fruin, Agent, Lemoore, California, Thanksgiving Day, November 25, 1954.

(6) D. K. Williams, Telegrapher-clerk, Chowchilla, California, Thanksgiving Day, November 25, 1954.

(7) C. Corzine, Agent-Telegrapher, Kerman, California, Christmas Day, December 25, 1954.

(8) M. G. Anderson, Telegrapher-clerk, Madera, California, Christmas Day, December 25, 1954.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the Southern Pacific Company (Pacific Lines), hereinafter

shall be paid for at the overtime rate when the entire number of hours constituting the regular week day assignment are assigned and worked.

"Section (b). When not assigned to work the hours of the regular week day assignment or when notified or called to work on the above specified holidays a less number of hours than constitutes a day's work within the limits of the regular week day assignment, employees shall be paid a minimum allowance of three (3) hours at the overtime rate for three (3) hours' work or less and at the overtime rate for all time worked after the third hour of each tour of duty.

"Section (c). Time worked before or after the limits of the regular week day assignment shall be paid for in accordance with the overtime provisions of Rule 14 or the call provisions of Rule 16.

"Section (d). No obligation exists to use any employee nor to compensate any employee not used on any of the holidays specified in Section (a) of this rule; provided, however, that if the position of a regular assigned employee is worked on any of such holidays, such regular assigned employee shall, if available, be used to perform such work."

The provisions of Rule 6 were complied with, and it is clearly apparent from the very language of the rule that it does not support the instant claim.

CONCLUSION

The carrier asserts that it has conclusively established the claim is without basis under the provisions of Section 1, Article II, of agreement dated August 21, 1954, and it is requested that said claim 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: Two categories of employees are involved in this case. The employees named in Claims B(1) through B(6) are extra employees. The employees named in Claims B(7) and B(8) are regularly assigned employees.

As to the extra employees the case involves the same "holiday" Agreement that was involved in Third Division Award 7977, and Rule 4, Section (b) of the Parties' Collective Agreement in the present case produces the same effect as that produced by the Rule 21 provision that was applied by this Board in said Award 7977. For the reasons stated in that Award the claims of the extra employees named in Claims B(1) through B(5), all of whom were filling the positions of absent regularly assigned employees during the periods of their claims and had compensation credited to the days immediately preceding and following the holidays, must be sustained. The claim of D. K. Williams in Claim B(6), who was not filling the position of any regularly assigned employee, must be denied.

The claims of the regularly assigned employees named in Claims B(7) and B(8) herein are without merit.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the 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 as to the employees named in Claims B(1) through B(5) inclusive, but did not violate the Agreement as to the employees named in Claims B(6), B(7) and B(8).

AWARD

Claims of employees named in Claims B(1) through B(5) inclusive are sustained. Claims of employees named in Claims B(6), B(7) and B(8) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1957.