

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

CASE No. 1:

(1) Carrier violated the terms of the prevailing agreement between the parties, when on July 16, 17, 23 and 24, 1953, it failed to compensate R. H. Derrick at the time and one-half rate for work performed on the sixth and seventh days of the work week of the Third Shift Operator-Leverman position at Louisiana Tower, Missouri.

(2) Carrier shall now be required to compensate R. H. Derrick for the difference between the straight time rate for eight hours which he received and the time and one-half rate for eight hours to which he was entitled for the service performed on the dates stated in paragraph 1.

CASE No. 2:

(1) Carrier violated the terms of the prevailing agreement between the parties when on October 27, 28 and November 3 and 4, 1953, it failed to compensate C. W. Kessinger at the time and one-half rate for work performed on the sixth and seventh days of the work week of the Third Shift Telegrapher position, Roodhouse, Illinois.

(2) Carrier shall now be required to compensate C. W. Kessinger for the difference between the straight time rate for eight hours which he received and the time and one-half rate for eight hours to which he was entitled for the service performed on the dates stated in paragraph 1.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in full force and effect between the parties on file with the National Railroad Adjustment Board which, by this reference, is made a part of this submission.

POSITION OF CARRIER: The Carrier's position in Case No. 2 is the same as its position in Case No. 1; only the Claimant and dates are different in the two cases.

The fallacy of the Claimant's position in claiming time and one-half for work performed on Tuesday and Wednesday, November 3 and 4, is pointed out by the fact that the two rest days, being his regularly assigned rest days, were observed as such. If, as the Claimant alleges, he was entitled to Tuesday and Wednesday as his rest days and he took Thursday and Friday as his regularly assigned rest days, there would have been four days during his regularly assigned work week, beginning Saturday, October 31, on which he would have performed no service.

The Claimants are presenting the claim on behalf of Telegrapher Kessinger, basing their contention on the same provisions of the agreement as those in the Derrick claim (Case No. 1) and, as stated, the Carrier's position is the same.

Carrier urges that the two claims referred to above are not supported by the agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Derrick is regularly assigned to a rest day relief assignment scheduled to work the first shift on Mondays, the second shift on Tuesdays and Wednesdays, and the third shift on Thursdays and Fridays—all at Louisiana Tower. His rest days are Saturday and Sunday. On Tuesday, July 14, 1953, Pearson, the regular incumbent of the third shift position, became ill and Derrick was assigned to work in his place. He continued to work the third shift position every day until July 26. During this period, Derrick was paid at time-and-one half for each day except the two Thursdays and Fridays on which he would normally have worked the third shift position as part of his regular assignment. For these four days, he was paid his regular rate. The facts as to Claimant Kessinger are essentially similar to those relating to Derrick; the issue is precisely the same.

In each case, the claim is made that time-and-one-half should have been paid on each of the four days Carrier paid claimants their regular rate. The theory of the claim is that Claimants, having been diverted temporarily from their regular positions to other positions, acquired the rest days of the temporary positions and should have been paid time-and-one-half for working on those rest days even though the work they did on those days was the regularly assigned work of their regular positions.

In our view, the governing rule is Rule 9—Regularly Assigned Employees Performing Emergency Relief Work. This rule provides:

“Regularly assigned employees will not be required to perform service on other than their regularly assigned positions, except in case of emergency, and when such service is required they will be compensated at the rate of time and one-half on the basis of the assignment filled, and if so used on assignments away from their home station they shall be allowed actual necessary expenses while away from their home station.”

This rule covers completely the situation when a regularly assigned employe is required to perform services on other than his regularly assigned

position by obligating the Carrier to pay such employe at the penalty rate "when such service is required". We cannot find in this case, as contended by Claimants, that they were required to perform services on other than their regularly assigned positions at the same time as they were in fact performing precisely their regularly assigned work. The payment of time-and-one-half under this rule does not depend upon work on rest days of either position; it is based upon being required to perform services on any day on a position other than the one to which regularly assigned. On every day on which Claimants performed such services in this case, they received the penalty rate. When they performed their regularly assigned work, they received the regular rate. We think they were correctly paid under this rule and under these circumstances.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.