

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 Company that:

1. Carrier violated the terms of the agreement between the parties when on November 27, December 25, 1952 and January 1, 1953 it failed to use M. E. Ash, the regular assigned Operator Clerk on the third shift at Vandalia, Missouri, a seven day position.

2. Carrier shall compensate M. E. Ash for eight hours at the time and one-half rate of pay of the Third Shift Operator-Clerk position for November 27, December 25, 1952 and January 1, 1953.

EMPLOYEES' STATEMENT OF FACTS: Claimant M. E. Ash was regularly assigned to the Third Shift Operator-Clerk position at Vandalia, Missouri, in May 1942. This was a seven day position at the time of his assignment and remained a seven day position after the Forty Hour Week Rule became a part of the agreement.

Mr. Ash was assigned a work week beginning on Thursday with rest days of Tuesday and Wednesday. His assigned hours were 9:00 P.M. to 5:00 A.M. There is a regular assigned relief employee to work the rest days, Tuesday and Wednesday.

On November 27, December 25, 1952 and January 1, 1953, which were all Thursday and the first work day in the work weeks of claimant Ash, the Carrier did not use M. E. Ash. Mr. Ash made claim for the violation. The claim was amended from the straight time rate to the proper rate of time and one-half for the work on the holidays.

This claim was handled on the property by the General Committee and in conference on July 12, 1955 the Carrier's highest officer designated to handle claims verbally denied the claim. The claim is now properly before your Board for an award.

POSITION OF EMPLOYEES: There is an agreement in effect dated July 25, 1949. Rule 29, Section 1, Paragraph (n), of that agreement provides:

The record in this case clearly shows that the practice to which the Board refers has continued, without protest, from 1919 until this isolated claim was made. No claims have been filed prior or subsequent to the instant claim although the practice of relieving employes on holidays has continued. On June 1, 1953, the parties to the agreement clearly showed the prior interpretation by including the word "holidays" in the "Guarantee Rule". Had the parties to the contract ever intended that the "Guarantee Rule" would guarantee an employe payment for a holiday, even though he did not work, such an intent would obviously have been expressed in the agreement. Such an intent is directly opposed to the accepted practice prevailing since 1919 and the application of the "Guarantee Rule" since 1934. The interpretation of the "Guarantee Rule" as to laying employes off on holidays has been attested to many times by the Telegraphers' representatives in prior cases before this Board.

It is clear that the "Guarantee Rule" was never intended to give Claimant Ash a day's pay when he performed no service on the three holidays referred to in the claim, namely, November 27, 1952, December 25, 1952 and January 1, 1953. It was not until May 1, 1954 that an agreement was entered into to pay employes for holidays when they did not work. This was the result of a change in the contract which was not in effect when the instant claim was made.

Carrier urges that the instant claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Organization relies here on Rule 29, Section 1, paragraph (n) of the Agreement of July 25, 1949, reading:

"Regular assigned employes will receive one day's pay within each twenty-four hours according to location occupied, or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours, as per location, except on relief days."

Three holidays—November 27 and December 25 of 1952 and January 1, 1953—are here involved. All three occurred on one of Claimant's regular work days. Claimant did not work on any of these days.

Rule 6 of the applicable Agreement provides:

"(a) Time worked on the following holidays: New Years, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas (provided when any of the above holidays falls on Sunday the day observed by the state, nation, or by proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half.

"(b) Employes who are notified or called to work on the above specified holidays within their regular week day assignment shall be paid for all time worked at the rate of time and one-half with a minimum of three (3) hours at the rate of time and one-half for three (3) hours' work or less.

"(c) This rule shall not apply to the ticket agent at Bloomington."

Argument offered on behalf of the Organization notes that

"* * * this rule (6) does not say or imply that regularly assigned employes may be held off their positions without compensation on a regular work day of their assignment. It provides the manner of payment for employes who work on these holidays.

"It does not provide that such employes may be withheld from their positions without compensation. But Rule 29, Sec. 1, (n), SPECIFICALLY and EXPLICITLY, with no equivocation, provides that such employes will receive one day's pay within each twenty-four hours if ready for service and not used. Only one exception is provided, 'except on relief (rest) days'. This exception is not applicable as the days involved are not claimant's relief days." (Capitalization and underscoring theirs.)

Argument is offered on behalf of Carrier

"* * * that since at least 1919 telegraphers, as well as other employes, have been relieved on holidays when permissible to do so. Much more, the Record is replete with evidence that under Rule 15 (later Rule 6) and the 'Guarantee Rule' the Organization agreed that it was permissible, and within the terms of the Agreement, to excuse telegraphers on holidays. In letter dated December 23, 1932, the General Chairman said:

'Rule 15 (6 here) of the Telegraphers' Schedule provides on what days telegraphers will be excused from service and if not excused how they will be paid, it recognizes Christmas and New Year's as holidays, this year Christmas is on December 25th and not December 26th and New Year's day is January 1st and not January 2nd.'

Carrier also quotes similar letters from the General Chairman dated May 28 and June 13 in 1937 stating:

"Telegraphers may be excused from Sunday service or holidays designated * * *."

"* * * telegraphers could not be laid off except on Sundays and recognized holidays * * *."

There was also a General Chairman's letter dated June 8, 1946 confirming a conference agreement on a claim:

"* * * Payment will be allowed for days other than Sundays and holidays,* * *."

Among prior awards cited by or in behalf of Carrier is denial Award 945 (DeVane). The issue there was not the same as that confronting us here. In 945 Organization claimed Carrier had no right to idle a telegrapher on a Monday following a Sunday holiday because the then applicable Agreement made no provision for Monday observance of a holiday falling on Sunday.

The Master File in Award 945 is here in evidence, having been presented by Carrier Member arguing this case. In its oral argument there submitted, the Organization notes:

"* * * The Agreement entered into provided that the services of employees could be dispensed with on the particular holidays specified in the Rule, but did not provide that when holidays fall on Sunday employees could be laid off on that day and also on the following day (Monday) * * *."

Carrier states that

"* * * since 1919 bulletins have been issued prior to each holiday, notifying employees that have assigned 'Sunday hours' that they would work only assigned 'Sunday hours' on holidays. Of course, employees who did not have assigned 'Sunday hours' were not required to work on holidays.

"Following the execution of the August 3, 1934 Agreement, a controversy arose regarding the application of the Agreement, and a special understanding was entered into on June 20, 1936 * * *."

"To show that it was not considered by the parties as a violation of the so-called 'Guarantee Rule' to relieve employees on holidays, particular attention is called to the following language of the June 20, 1936 Agreement. In writing to the General Chairman, Mr. Deasy, Assistant Vice-President of the Railroad stated in part:

"* * * you did not agree that a telegrapher could be relieved on any day EXCEPT SUNDAYS AND HOLIDAYS * * *." (Emphasis theirs.)

The Carrier also notes that when the June 1, 1953 Agreement was entered into (this claim precedes it) the parties

"* * * well knew, because of the long established practice and interpretations of the preceding Agreements, that there was no guarantee that employees would work on holidays. Because of this known fact * * * the 'Guarantee Rule' from the August 3, 1934 Agreement was incorporated as Rule 5, reading:

'Regularly assigned employees will receive one day's pay within each twenty-four (24) hours according to location occupied, or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours, as per location, except on rest days and holidays.'

The newly written section, Carrier asserts, "clearly shows the application of all prior agreements and carries out the prior interpretations in possibly more explicit language by incorporating into the rule 'except on rest days and holidays.'"

This record is replete with clear evidence of the manner in which the parties have mutually interpreted the Rules here in dispute. It also contains many instances where responsible Organization representatives have consistently taken positions contrary to that contended for in the confronting claim.

We believe the preponderating evidence supports Carrier's position. A denial Award is, therefore, indicated. Award 7806 (Carey). Our Award will deny Organization's claim in this particular; it will decide nothing else.

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 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 13th day of June, 1958.