

Award No. 8389

Docket No. TE-8232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

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

1. The Carrier violated the Agreement between the parties when it called H. H. Hartman, regular occupant of the 7:00 A.M. to 3:00 P.M. leverman's position at Delphi Tower, on Thursday, December 3, 1953, one of his assigned rest days to the station to perform other work for which the Carrier has refused to compensate him.
2. The Carrier shall now, by appropriate order of your Board, compensate H. H. Hartman for 8 hours at the time and one-half rate for the work performed in accordance with the provisions of the prevailing agreement.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

The Claimant in the instant case, H. H. Hartman, was regularly assigned as first shift leverman at Delphi Tower, Indiana, a seven day position, assigned hours 7:00 A.M. to 3:00 P.M., rest days, Wednesday and Thursday, (relieved).

On Thursday, December 3, 1953, (one of Hartman's assigned rest days), Mr. Desper, a Claim Agent of the Carrier, called Hartman at his home, by telephone from the station at Delphi, and, as a result of the telephone conversation, Hartman came to the station at 9:00 A.M., furnished information and signed a statement in connection with the crossing gates near Delphi Tower which had suffered damage during Hartman's tour of duty either the day before or a few days previous.

Operator Hartman turned in a two (2) hour "call" for December 3, 1953, which was paid. Later, in March 1954, this amount was deducted from Hartman's check. The Carrier claiming the time slip had never been approved or had been disapproved. The claim to recover the amount deducted from March 1954 pay check was filed by the General Chairman and appealed up to

OPINION OF BOARD: Claimant was regularly assigned as Telegrapher-Leverman-Clerk at Delphi, Indiana, 7:00 A.M. to 3:00 P.M., Friday through Tuesday with Wednesday and Thursday as his assigned rest days. A part of his duties was to operate the Washington Street crossing gates which were damaged on March 28, 1953, when an automobile was driven into them. Claimant was on duty when this accident occurred.

On Thursday, December 3, 1953, (Claimant's rest day), a claim agent of the Carrier telephoned Claimant at his home to obtain a statement concerning the aforesaid accident. The agent offered to go to Claimant's home but the latter indicated he preferred to go to the station to make the report, which he did.

Claimant thereupon filed a claim for a two-hour call which was first paid in December of 1953 but later, in March of 1954, deducted from Claimant's pay as having been an error.

Claimant then filed an amended claim for 8 hours at the overtime rate, which was denied by the Carrier on November 4, 1954, and submitted to this Division of the Board on January 19, 1956.

Petitioner relies on Rule 7, Section 2 (b) II, A (1), of the Agreement of September 1, 1955, contending that when Claimant complied with the request for information he was performing a necessary service in the interest of the Carrier and that such service constituted "work" on an assigned rest day within the meaning of and compensable under the aforesaid contract rule.

Respondent contends that the service performed was not "work" within the meaning of Rule 7 and therefore not compensable. It also cites Rule 14 of the Agreement as the sole rule under which Claimant might have had a remedy but for the fact that he was unable to show any loss of wages.

From a review of the facts it is clear that the services performed by the Claimant were in the interests and served the purposes of the Carrier. Claimant acted as a witness, not as a principal, in complying with the request for a statement and there was no "mutuality of interest" here such as to bar his claim for compensation. However, we also find that the inquiry was in the nature of an investigation, as admitted by the Petitioner in its statement at the hearing (Employes' Second Submission at p. 4). Thus, Claimant's remedy clearly came within the provisions of Rule 14 and not under Rule 7. Rule 14, being a special rule, takes precedence over the general rules contained in Rule 7 and, under the facts here, must be held controlling.

Since Claimant is unable to claim a wage loss because he is not entitled to compensation while on his rest days, Rule 14, while applicable, provides no basis for compensation.

We conclude that this claim may not be sustained under the rule relied on by Petitioner and must be denied. However, the record discloses that the Carrier deducted the amount paid for the claim first submitted by Claimant from a subsequent pay check after the lapse of more than sixty days time. This is a violation of the terms of Rule 5(e) of the Agreement which read as follows:

"(e) No adjustments for overtime or extra service will be allowed, or deductions on this account made, unless attention has

been called to the error within sixty (60) days from the time services were performed."

We find that the deduction was improperly made and that the Carrier shall refund to Claimant the amount so deducted.

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 Carrier violated the Agreement only to the extent set forth in the foregoing Opinion.

AWARD

Claim disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of July, 1958.