

Award No. 9950
Docket No. TE-8452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. La Driere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. The Carrier violated the agreement between the parties when it failed and refused to pay Operator A. H. Whitty, New Bern, North Carolina, a three hour call at time and one-half rate for each Sunday rest day of November 29, December 6, and December 13, 1953.

2. The Carrier shall now be required to pay Operator A. H. Whitty three hours at time and one-half rate for each of the dates specified above.

EMPLOYES' STATEMENT OF FACTS: Prior to October 27, 1953, Claimant Whitty was the regularly assigned night Operator-Clerk at New Bern, North Carolina, assigned hours 7:00 P. M. to 3:00 A. M., rest days, Sunday and Monday. Claimant was required to work his rest days to the extent of a Call on Sundays, and eight (8) hours on Mondays. The Sunday call was confined to a three hour period beginning at 10:00 P. M.

On October 27, 1953, Claimant was duly notified by the Chief Dispatcher as follows:

"Raleigh, N. C., October 27, 1953

A. H. Whitty, New Bern

"Effective immediately relief days for night operator-clerk Whitty will be Saturdays and Sundays instead of Sundays and Mondays. Operator-clerk Whitty will report ten P. M. Saturdays and Sundays nights on call basis.

F. W. Davis"

Thereafter, Mr. Whitty's starting time on Saturdays and Sundays was 10:00 P. M. This was a standing instruction to remain in effect until notice

decision in Award 5661, is the Referee's own statement in his opinion in that award, reading:

"Our question is not about work performed but about being called and not used upon one's rest day and subsequent to issuance of such call **what notice with reference to the time element** must the Carrier issue to avoid the same." (Emphasis supplied.)

Respondent respectfully submits that this statement is conclusive that the time element was one of the major factors which governed the Referee's decision.

IN CONCLUSION, it is respectfully submitted that in extending notice of the cancellation of the standing call on the dates for which claims are herein asserted the respondent was fully cognizant of the holding of the Referee in the previous identical claims, particularly with respect to the advance time of such notification of cancellation of calls, and that the extending of such notice six hours in advance of the call reporting time constitutes, as expressed negatively in the opinion of the Referee, reasonable and sufficient and proper notice.

All of the data contained herein has been discussed with the employe representatives, either in conference or by correspondence, and/or is known and available to them.

For the reasons hereinbefore stated respondent submits that the claims asserted are without contractual foundation or merit; that the actions of the carrier in this case were in conformity with the opinion expressed by the Referee in the previous similar case, and that the claim should be denied, and urges that your honorable board so hold.

OPINION OF BOARD: Claimant was the regular Operator-Clerk at New Bern, North Carolina, working hours 7:00 P. M. to 3:00 A. M. daily Monday through Friday, with Saturday and Sunday as rest days. New Bern is on the main line of Carrier and there is only one train each day, a turn-around freight. Claimant had standing instructions to report for a call on Sunday nights to perform certain work in connection with this train, but on the dates in question, which were Sundays, the train was annulled, and as the Claimant's services were unnecessary he was notified between five and six hours in advance, not to report for the call on those days.

The Organization contends that as the claimant had standing instructions to report on Sunday nights at 9:00 P. M. this became part of his **regular assignment** and that the Carrier violated the agreement (Article 6-a) when it failed to give him 36 hours notice. This section reads:

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected."

The weight of the awards is against the contention of the Claimant. Award 8345—Daugherty, 8856—Bakke, 6694—Leiserson, 9192—Weston, 9474—Grady, and 5661—Monro.

Both parties rely on Award 5661. The opinion however states that Article 6-a "has no application in that the periods of time we are concerned with were outside of Petitioner's assignment". In Award 9474—Grady, it was said with reference to 5661:

"The Organization refers to Award No. 5661 involving the same parties. There the claimant had standing instructions to work holidays (Sundays). Two were blanked. On one he was sent home upon reporting to work and on the other was given a little over three hours notice not to report. The rules there involved are substantially those before us here. The Carrier, without reserving its position, has paid a call for the holiday on which claimant had reported for work. It appears that liability was, therefore, taken as conceded and the claims sustained on that ground. Here there has been no payment or concession."

Under the circumstances the claim should be denied.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.