Award No. 10252

Docket No. TE-8662

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

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

1. Carrier violated the Agreement when it failed and refused to properly compensate L. F. Gayton, for eight hours at time and one-half pro rata rate for service performed on rest day (July 11, 1955).

2. Carrier shall compensate L. F. Gayton for the difference between the pro rata rate which he was paid and the time and one-half pro rata rate which should have been paid (agent-operator position, Leesburg, Florida) for eight hours for service performed on July 11, 1955.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Seaboard Air Line Railway Company (now Seaboard Air Line Railroad Company), hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreement was effective October 1, 1944 and has been amended. The agreement as amended is on file with this Board and is by reference included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by management to handle such disputes, and failed of adjustment.

The dispute involves interpretation of rules of the collective bargaining agreement and is, under the provisions of the Railway Labor Act, as amended, referable to this Board for award determining the dispute.

L. F. Gayton, the claimant herein, was at the times hereinafter mentioned an extra employe covered by the Telegraphers' Agreement on Seniority District No. 5. Prior to July 5, 1955, Mr. Gayton was instructed by his supervisor to go to Leesburg, Florida, and there relieved the regularly assigned agent for the purpose of his taking vacation. The assignment for Mr. Gayton was for the period of July 5 to July 19, 1955. The assigned rest days of the position of agent at Leesburg were Sunday and Monday of each week.

Operator did not work on Sundays; consequently, paragraph (b) of this rule was adopted so as to allow payment of a day's pay to those employes who had no assignment on Sundays and were required to attend an investigation strictly as a witness for the Company and also to provide payment for a day's pay for extra operators who held no regular position. This is proven by the fact that the last sentence of Rule 18(b) stipulates that:

> "If having no regular assignment on a day required to attend investigation or hearing employe will be allowed a day's pay at the rate of **his position . . .**" (Emphasis ours.)

and, additionally, to provide a day's pay for extra employes who had no position by including therein the phrase ". . . position last worked . . ."

The claimant in the instant case held no regular assignment to be worked on July 11. Rule 18(b) is a special rule that was designed to take care of situations such as the one herein; consequently, he was properly compensated, viz. a day's pay at the pro rata rate of the Agent-Operator at Leesburg, Florida.

The organization in handling this claim on the property maintained that Rule 12, Section 1(m),—Service on Rest Days—was controlling. This rule was agreed to in Supplemental Agreement signed at Norfolk, Virginia, the 17th day of May 1950, to become effective September 1, 1949, and to be identified in Supplement No. 4 as Section 1, paragraph (m)—Service on Rest Days—of Rule 12. The first sentence reads:

> "This rule is for the sole purpose of determining the compensation for employes who are required to work on their assigned rest days."

The Service on Rest Day rule certainly cannot control in the face of special Rule 18(b) which covers the subject matter. This Rule 18(b) is clear and unambiguous and with regard to special rules that cover the subject matter under consideration taking precedence over general rules, your attenion is directed to Third Division Awards 1816, 2512, 4496, 6374, 6382, 6383, 6316, 6311, 6278, 6263, 6137, 6003, 5992, 5942 and 7090.

The carrier complied with other provisions of Rule 18(b) in that the claimant was allowed necessary expenses while away from Leesburg. If Rule 12, Section 1(m) is controlling (we do not concede that it is), the carrier was under no obligation to allow claimant pay for necessary expenses. Moreover, if this rule controls, it certainly does not obligate carrier to pay eight hours at the time and one-half rate in all instances unless the employe was in attendance at least eight hours.

It is the carrier's position that Rule 18(b) governs and it follows that the claim should be further denied.

It is affirmatively stated that all data used herein have been discussed with or is well known to employe's representative.

OPINION OF BOARD: Beginning July 5 and extending to July 19, 1955, the Claimant, an extra employe, relieved the regularly assigned Agent-Operator at Leesburg, Florida, while the latter was on vacation. On Monday, July 11, 1955, an assigned rest day of the position, the Claimant was required to attend formal investigation of another employe. Claimant was paid his

expenses and eight hours at the pro rata rate of the position he was filling. He claims that he should have been paid at the rate of time and one-half, since July 11, 1955 was his rest day. In support of this position, reference is made to various provisions of the Forty-Hour Work Week Agreement that have been adopted by the parties.

Rule 18 of the applicable rules Agreement, insofar as it is material, reads as follows:

> "(a) Employes taken away from their regular assigned duties, at the request of the management, to attend court or to appear as witnesses for the carrier, will be furnished transportation and will be allowed compensation equal to what would have been earned, including Express commissions and Western Union gratuities, had such interruption not taken place, and, in addition, necessary actual expenses while away from headquarters . . .
>
> "(b) Employes required to attend investigations or hearings in which not at fault will be allowed compensation equal to what he would have earned, including Express commissions and Western Union gratuities, had he remained on his position, and, in addition, necessary expenses while away from home. If having no regular assignment on day required to attend investigation or hearing, employe will be allowed a day's pay at the rate of his position or position last worked, for each day absent from home."

The record shows that Rule 18(b) rather than Rule 18(a) is applicable. On July 11, 1955, the Claimant was required to attend an investigation of another employe.

The first sentence of Rule 18(b) covers a situation in which an employe cannot remain on his position because he is required to be away from it in order to attend an investigation. This appears from the statement therein that such an employe "will be allowed compensation equal to what he would have earned . . . had he remained on his position." This language clearly implies that an employe who is removed from the regularly assigned duties of his position to attend an investigation will be treated as if he had remained at such duties.

On July 11, 1955, the Claimant was away from the position which he was filling because it was a rest day of that position. Thus, he would not have "remained on his position" on that day even if he had not been required to attend an investigation. For these reasons, the first sentence of Rule 18(b) is not applicable.

Under the second sentence of Article 18(b), the allowable compensation "on day required to attend investigation" is "a day's pay at the rate of his position or position last worked, for each day absent from home" which is the pro rata rate unless the parties have otherwise provided by reason of their adoption of provisions of the Forty-Hour Work Week Agreement. There is no showing that by the last mentioned provisions the parties intended to supersede the terms of Rule 18(b) or that the Forty-Hour Work Week provisions were intended by them to be applicable to the special type of services described in Rule 18(b). In the absence of such showing, Rule 18(b), as a specific rule applicable to the particular services therein mentioned, must be regarded as prevailing.

The 1949 payment referred to by the Employes is not persuasive. It

involved Rule 18(a) in that it concerned a court attendance as a witness for the Carrier, and is not sufficient to establish a past practice with respect to Rule 18(b).

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 Employe involved in this dispute are respectively Carrier and Employe 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 19th day of December, 1961.