

Award No. 10289
Docket No. TE-9455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad that:

1. Carrier violated the agreement between the parties when in changing the assigned rest days of Ruth Anderson, regularly assigned incumbent of Printer Operator Position No. 230 in the Omaha, Nebraska Relay Office, it improperly suspended her from work on February 18, 1956.

2. Carrier shall now compensate Ruth Anderson for one additional day at the straight time rate.

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

Prior to time cause for this claim arose, Ruth Anderson was regularly assigned to Printer Operator Position No. 230 in the Relay Office at Omaha, Nebraska, with assigned hours 7:00 A.M. to 3:00 P.M., work week commencing on Tuesday and assigned rest days Sunday and Monday. On February 9, 1956, the Carrier issued a bulletin notice changing the rest days on this position to Saturday and Sunday designating the effective date as February 16, 1956.

Immediately prior to and subsequent to February 26, Claimant Anderson worked as follows:

Tuesday, February 14 — worked
Wednesday, February 15 — worked
Thursday, February 16 — worked
Friday, February 17 — worked
Saturday, February 18 — idle
Sunday, February 19 — idle
Monday, February 20 — worked
Tuesday, February 21 — worked

"Hence it does not appear that there is any basis for the claims and to hold otherwise under these provisions would simply nullify the provisions of Subsection (1) permitting a change of rest days upon specified written notice."

Any other decision in this case would nullify the provisions of Rule 8 (1) permitting a change of rest days upon specified written notice. It would be absurd to have a rule authorizing the change in rest days in situations such as this if it could not be applied by Carrier without incurring the penalty which Petitioner is seeking here. Such a condition was not the intention here, and it has been so recognized in the awards cited herein, particularly in Award No. 14 of Special Board of Adjustment No. 136, cited above.

In conclusion, Carrier submits that:

1. The change in rest days and work week was made in conformity with the provisions of Rule 8(1).
2. Saturday, February 18, 1956, was a rest day and not a work day for claimant, consequently, the clear provisions of Rule 17 invalidate the claim.
3. Awards cited herein clearly support Carrier's position.

In the light of these clear facts, there can be no decision other than denial of the claim in its entirety.

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Carrier affirmatively states that all data herein and herewith submitted have been previously submitted to the Employees.

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OPINION OF BOARD: Claim is made that the Carrier violated the Agreement between the parties when in changing the rest days of Claimant, regularly assigned incumbent of Printer Operator Position No. 230 in Omaha, Nebraska Relay Office, it improperly suspended her from work on February 18, 1956.

Claimant demands 8 hours compensation for February 18, 1956, on the theory that this was not her "assigned rest day" and that she was therefore required to suspend work during regular hours.

Carrier contends that the date involved was a regularly assigned rest day of Claimant and therefore Claimant was not required to suspend work during her regular hours.

The same issue involving this Organization has been before this Board in prior cases. Award 7324 followed by Awards 8103, 8144 and 8145 sustained the claims and these awards in our opinion set a precedent which is controlling in the case before us.

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 contract was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1961.

DISSENT TO AWARD 10289, DOCKET TE-9455

The Awards which the majority cite as controlling in this case were all erroneous for the reasons stated in the dissents thereto. This Award is likewise erroneous and we are compelled to dissent.

/s/ G. L. Naylor
/s/ F. J. Goebel (per REB)
/s/ O. B. Sayers
/s/ R. A. De Rossett
/s/ R. E. Black