

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Arthur Stark, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY — Eastern Lines**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when it refused to pay J. F. Randolph for eight hours at the time and one-half rate for service performed at Chanute, Kansas, on September 1, 1955; and
2. The Carrier shall now be required to compensate J. F. Randolph for the difference between eight hours at the pro rata rate and eight hours at the time and one-half rate for service performed at Chanute, Kansas, on September 1, 1955.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

Telegrapher-printer clerk Crim, Chanute, Kansas, regular assigned to perform rest day relief work at that station as follows:

Saturday-Sunday	7:45 A. M. to 3:45 P. M.
Monday-Tuesday	3:45 P. M. to 11:45 P. M.
Wednesday	11:45 P. M. to 7:45 P. M.
Thursday-Friday	Rest days.

was granted a vacation beginning Saturday, August 20, 1955. He was entitled to ten working days' vacation with pay. There were no extra telegraphers idle and available to relieve him on the first two days of his vacation period and the regular occupant of the 7:45 A. M. to 3:45 P. M. position was required to work on his rest days, Saturday and Sunday, August 20 and 21, 1955. Claimant, J. F. Randolph, became available and was assigned to fill the remainder of the vacancy on Crim's rest day relief assignment beginning Monday, August 22, 1955.

Randolph worked Monday, Tuesday and Wednesday, August 22, 23 and 24, 1955. He then observed undisturbed the two rest days attached to rest days attached to the position. On Saturday, August 27, 1955, he began to work the

in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs presented by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: The relevant facts may be summarized as follows:

In August 1955 Telegrapher-printer Clerk Crim was regularly assigned to perform rest day relief work at Chanute, Kansas. His regular schedule: Saturday-Wednesday with Thursday and Friday as rest days.

Crim was granted a two week vacation (ten working days) for the period August 20 through September 2. On Saturday and Sunday, August 20 and 21, Crim's job was filled by the regular occupant of the position (no extra men were available). On Monday, August 22 Extra man J. F. Randolph, the Claimant, was assigned to fill Crim's position.

Randolph worked in Crim's position from August 22-24, inclusive (Monday-Wednesday). He observed August 25 and 26 (Thursday-Friday) as rest days. He resumed work in Crim's position on August 27 and performed work on August 27-31, inclusive (Saturday-Wednesday). (The final shift of this assignment actually terminated at 7:45 A. M. on Thursday, September 1.)

September 1 was the second rest day in the regular schedule of Telegrapher-printer Clerk J. P. Carlos. Normally, Carlos' second rest day was filled by assignments from the extra list. On this particular day, Randolph was given the job (he was the only extra man available) and worked from 11:45 P. M. on Thursday, September 1 to 7:45 A. M. on Friday, September 2.

The issue before us is whether Randolph should have received pro rata rate for his September 1 assignment (what he was actually paid) or time and one-half (as the C. R. T. claims).

The Carrier recognizes that, under the general Forty-Hour Week Rules, an extra Employee who has worked the five days of a work week of a regular assigned Employee receives the rest day of that assignment and, if he works on these rest days, is to be paid time and one-half. However, it contends, in the present case these general rules do not apply because the parties have negotiated a specific provision designed to permit assignment of extra men to tag and rest days without penalty pay. In citing Article III, Section 10-b the Carrier calls particular attention to the first phrase of the third sentence which, it claims, did not appear in Agreements involved in prior awards on this subject.

"Work on rest days not covered by regular relief assignments may be performed by qualified extra men if available, who will be paid pro rata rates therefore, and whose days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment."

The Carrier also argues that (1) contract overtime rules do not apply to Randolph's September 1 work since, under Article III, Sections 19-a and 19-b, straight time is to be paid when an Employees' overtime results from moving "to or from an extra or furloughed list"; (2) since Randolph's relief chore ended on August 31, he then reverted to the extra list and did not assume Crim's September 1 and 2 rest days; (3) as an extra Employee Randolph's work week,

under Article III, Section 13, was "a period of seven consecutive days starting with Monday"—here August 29; hence he worked 32, not 40, hours and is not entitled to overtime pay.

Most of these contentions have been rejected by the Board in prior awards. It is true that, generally, extra men's work weeks start with Monday. But there is a specific exception: "... if they take the assignment of a regular Employee they will have as their days off the regular days off of that assignment" (Article III, Section 10-b). Faced with a similar clause in Award 6970 we held:

"... an extra employee who works all five days of the work week of a regular assigned employee is entitled to the two rest days incidental to that work week, and, if he is required to work on the rest days thereof, he is entitled to be paid for the rest day work, namely, the time and one-half rate."

The above cited provision of Section 10-b also provides the answer to Carrier's contention concerning moving to or from the extra list. The Board recognized this in Awards 5494 and 5495 (which were based on another exception to the overtime rule covering work performed by an Employee due to moving "from one assignment to another."

What of the Carrier's argument that Section 10-b here contains a unique provision distinguishing it from its predecessors?

The key clause, according to the Carrier, provides that "Work on rest days not covered by regular relief assignments may be performed by qualified extra men if available, who will be paid pro rata therefore . . ." But in Award 6971, involving the O. R. T. and New York Central Railroad (decided April 29, 1955). Article 10, Section 1(e) stated in relevant part: "Work on rest days not covered by regular relief assignments may be performed by qualified extra men if available who will be paid rates applicable to respective positions relieved."

Significantly, the O. R. T.—New York Central Agreement also contained a provision, like the 10-b proviso in the present contract, which stated: "To the extent extra men may be utilized under applicable agreement rules, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment."

Under the circumstances, and particularly in view of the similar factual situations, this Board's Opinion in Award 6971 is directly in point:

"When an extra employee takes the assignment of a regular employee, he assumes the conditions of that assignment. He takes the work week of the occupant and the rest days incidental thereto . . . when he works 40 hours in the work week of the position assumed, he is entitled to the rest days thereof. If he works on his rest days, he is entitled to be paid for rest day work . . ."

(Paranthetically, we note that one of the difficulties in the present case may be that the Claimant Randolph, possibly, was not entitled to the September 1 assignment in the first place. True, he was the only available extra man. But Article III, Section 14 declares:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Since Randolph had already worked 40 hours during the week in question, the September 1 assignment, under III, 14, should have gone, presumably, to the regular employe. However, no claim was submitted on this score and, for purposes of this decision, we are concerned solely with Randolph's rate of pay, regardless of the propriety of his assignment.)

In sum, we find this claim should be sustained since (1) Randolph assumed Crim's rest days during the latter's absence; (2) Randolph worked 40 hours in the applicable work week prior to his September 1 assignment; (3) Article 20-b of the Agreement provides that under such circumstances time and one-half be paid for work performed on rest days.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1962.