Award No. 10497
Docket No. TE-9166

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (TEXAS AND NEW ORLEANS RAILROAD COMPANY)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad), that:

1. Carrier violated the Agreement when it failed and refused to compensate G. D. Edgar, at the time and one-half rate, for service rendered on March 18 and 19, 1956, at Victoria, Texas.

2. Carrier will be required to compensate G. D. Edgar for the difference between the pro rata rate paid and time and one-half pro rata rate which should have been paid, for services rendered on March 18 and 19, 1956, at Victoria, Texas.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collective bargaining agreements entered into by and between Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans 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 December 1, 1946, and has been amended. The Agreement, as amended, is on file with this division and is, by reference, made a part hereof as though set out herein word for word.

The 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 submitted in this submission involves interpretation of the collective bargaining agreement and is, under the provisions of the Railway Labor Act, as amended, referable to this division for award.

The facts are as follows:

At all times hereinafter set forth G. D. Edgar was the owner of an assignment at Victoria, Texas. The assignment was on position classified as Telegrapher-Clerk. The assigned hours were 4:00 P. M. to 12:00 midnight. The position of Telegrapher-Clerk was what is called a 7-day position in that it

ception becomes material the situation must exist to which the exception has application.

"The quoted language of Rule 9 (d), in so far as overtime is concerned, has application when an employe has worked in excess of forty straight time hours in any work week or when he has worked more than five days in a work week and, in doing so, has worked on either the sixth or seventh days thereof, or both. Since claimant's old work week ended after he had completed his work on March 16, 1951, and since his new work week started on March 17, 1951, he performed no work within the meaning of the foregoing provisions. Consequently there is no situation to which the exceptions could apply and therefore no need exists for discussing whether or not the situation here presented comes within the language thereof.

"In view of what we have here said we find the claim to be without merit."

The denial decision in above cited Award 6281 is a direct ruling on the very issue of the instant case, and basis for such decision incorporated the principles and interpretation of applicable agreement provisions established in other earlier Third Division awards. It can accordingly be said of the instant dispute what was observed by the Board and Referee Carter with reference to the matter before them in Second Division Award 1804 (already cited herein), to-wit:

"The dispute in this case has been conclusively settled by Awards of the Third Division. We shall state briefly the controlling principles."

The principles found controlling in that award as well as others cited, particularly Award 6281, likewise require a denial of the instant case.

CONCLUSIONS: Carrier has shown that claim of the instant case grew out of facts that absolutely preclude application of provisions in the Forty Hour Week Agreement purportedly relied upon by claimant and the Organization, for the period involved extended over portions of two entirely different work weeks, whereas the agreement provisions sought to be invoked are limited by their own expressed terms to time worked in a given work week. Carrier has shown that it established the new work week, which the Organization has refused to recognize, by changing rest days of the involved position precisely as authorized in a singularly clear agreement rule. It was shown, moreover, that principles and interpretations already enunciated and affirmed numerous times by the Third Division preclude the erroneous construction of the Forty Hour Week Agreement contended for by claimant and the Organization in the instant case, and prior direct ruling by the Third Division on the very issue presented in this case requires a denial of the claim. The Board is respectfully urged to so rule.

Data referred to in this submission has been subject of correspondence and/or conference discussion with Organization representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a controversy over a claim for overtime pay for services rendered on March 18 and 19, 1956, arising from a change in Claimant Edgar's rest days by the Carrier.

There is no dispute as to the facts; Claimant Edgar is a regularly assigned second trick telegrapher clerk whose work week extended from Tuesday through Saturday with Sunday and Monday as rest days. On March 14, 1956, the Carrier issued a bulletin effective 12:01 A. M., Sunday, March 18, changing the Claimant's rest days to Tuesday and Wednesday. The Claimant observed rest days on Saturday and Sunday, March 11 and March 12 and then worked seven continuous days from Tuesday, March 13 through Sunday and Monday, March 18 and 19, being paid straight time for the days in question March 18 and 19, the sixth and seventh of these seven days.

The Petitioner recognizes that under Rule 9(L) upon proper notice, the Carrier has been given the right to change rest days of employes but urges that Claimant is entitled, nevertheless, for his March 18 and 19 work, to time and one-half rather than straight time pay under Rule 4(C and D) which provides for such compensation in excess of forty straight time hours or five days in any work week.

It is Carrier's contention that under Rule 9(L) the Carrier is permitted to change the rest days to meet service requirements and there are no other restrictions. The Carrier contends that March 18 and 19 are ordinary work days inasmuch as Claimant's prior work week ceased to exist at midnight March 17 and a new work week was set up beginning Sunday, March 18, with rest days on Tuesday and Wednesday and consequently that March 18 and 19 are regular work days of the new work week. It is the further claim of the Carrier that any other interpretation would result in penalizing the Carrier when it effects these changes.

In a determination of this question which has been so many times before this Board, it is the duty of the Board to give effect to both Rule 9(L) and Rule 4 (C and D) if possible. They should be considered together, recognizing on the one hand the Carrier's right under the rules to change the rest periods of an employe and at the same time giving effect to the employe's right to overtime pay for his loss of rest days as provided for in Rule 4 (C and D).

With that in mind we adopt the language and principle enumerated on pages 10 and 11 in Award 9962 (Weston) as part of this opinion:

> "The question is not a novel one and has been before the Board on a number of occasions. The Awards that have considered the matter have not been consistent in their holdings and there appears to be no valid basis for reconciling many of the conflicting opinions. The fact is that they differ sharply on the broad principle that is involved and both the Carrier and the Organization are in a position to cite awards that lend support to their respective positions. While Carrier's contentions possess considerable appeal in the present case, it is our opinion that Awards 7319, 7324, 8144, 8868, 9243 and 9548 of this Division as well as Special Board of Adjustment No. 186, Awards 7 and 8 represent the better view and are sound and determinative of the issues (See to the contrary Awards 5854, 6211 and 6281, among others, and Special Board No. 305, Awards 3 and 6). What impresses us is that it would have been easy, if their intention had been compatible with Carrier's theory of the case, for the parties to the Agreement to have carved out the necessary exceptions from the overtime rules, or to have provided affirmatively that rest days may be changed without overtime compensation. In the absence of such contract language, an employe in the circumstances of this case, which are substantially similar to those considered in Award 7319 and Special Board

No. 186, Awards 7 and 8, is entitled to time and one-half compensation for the work performed on the sixth and seventh consecutive days, particularly when that work results from the Carrier's own changes in the 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 Employes involved in this dispute are respectively Carrier and Employes 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

The Claim will be sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1962.