

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, BURLINGTON AND 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 Hazel Kilgore, regularly assigned incumbent of Printer Operator Position No. 231 in the Omaha, Nebraska Relay Office, it required her to work on the sixth day of her work week at the straight time rate on February 18, 1956.

2. Carrier shall now compensate Hazel Kilgore for the difference between the straight time rate and the time and one-half rate for eight hours.

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

Claimant Kilgore was regularly assigned to Printer Operator Position No. 231 in the Omaha, Nebraska Relay Office, assigned hours 8:00 A. M. to 4:00 P. M., work week beginning on Monday with assigned rest days of Saturday and Sunday. On February 9, 1956 the Carrier issued a notice changing the rest days on this position from Saturday and Sunday to Sunday and Monday, designating the effective date as February 16, 1956.

The change in rest days resulted in the Claimant working more than forty hours in the work week beginning Monday, February 13, 1956, and she was paid the straight time rate of the position for work performed on the sixth day of her work week. She worked six consecutive days, Monday, February 13, Tuesday, February 14, Wednesday, February 15, Thursday, February 16, Friday, February 17 and Saturday, February 18, 1956.

Claim was filed for the difference between the straight time rate and the time and one-half rate for Saturday, February 18, was handled in the usual manner up to and including the highest designated officer of the Carrier and was denied.

"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 work day and not a rest day for claimant, and she was properly compensated at the pro rata rate for work performed on her assigned work day.
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.

OPINION OF BOARD: The Claimant's rest days were changed from Saturday and Sunday to Sunday and Monday, effective February 16, 1956, after due notice was given by the Carrier. As a result, Claimant was required to work six days in succession: Monday, February 13 through Saturday, February 18. The claim, based on the overtime rule, is for the difference in pay between the straight time rate, which was allowed for the sixth day worked, and the time and one-half rate.

Following Award 10517 (Miller), it is considered that the issue arising from this claim is settled by virtue of a succession of sustaining awards. Awards 5586, 5807, 7319, 7324, 8145, 9243, 9962 and 10497 (among others).

Therefore, the claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1962.