

Award No. 10744
Docket No. TE-9381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur Stark, 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 C. W. Chadwick, regularly assigned incumbent of the third trick Wire Chief position in the Omaha, Nebraska, Relay Office, it required him to work on the sixth day of his work week at the straight time rate on February 16, 1956.

2. Carrier shall now compensate C. W. Chadwick for the difference between the straight time rate and the time and one-half rate for eight hours.

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

Claimant Chadwick was regularly assigned to the position of third trick Wire Chief in the Omaha, Nebraska Relay Office, assigned hours 12-midnight to 8:00 A. M., work week beginning on Saturday with assigned rest days of Thursdays and Fridays. On February 9, 1956, the Carrier issued a notice changing the rest days on this position from Thursdays and Fridays to Fridays and Saturdays, 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 Saturday, February 11, 1956, and he was paid the straight time rate of the position for work performed on the sixth day of his work week. He worked six consecutive days, Saturday, February 11, Sunday, February 12, Monday, February 13, Tuesday, February 14, Wednesday, February 15 and Thursday, February 16, 1956.

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: In February 1956, Claimant C. W. Chadwick was the regularly assigned third trick Wire Chief at the Nebraska Relay Office. His work days: Saturday - Wednesday; his rest days: Thursday - Friday.

On Thursday, February 9 the Carrier issued a notice changing the rest days on the Wire Chief position from Thursday - Friday to Friday - Saturday, effective Thursday, February 16. This change was made in accordance with Rule 8(1) which provides:

"The rest days on all regular and relief positions shall be assigned and the employees shall be notified. The rest days shall be the same days of each week but may be changed to meet service requirements by giving not less than seventy-two (72) hours' written notice to the employees affected."

In the period involved, Chadwick worked as follows:

Th	F	Sa	S	M	T	W	Th	F	Sa	S	M	T	W	Th	F	Sa	S	M	T	W	Th	F	S
2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
off	off	x	x	x	x	x	off	off	x	x	x	x	x	off	off	x	x	x	x	x	off	off	

The Claimant was paid at straight time rates for all days worked. The Petitioner claims that, under pertinent sections of Rule 5, he should have received time and one-half for Thursday, February 16 (an additional \$9.31):

"(b) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g-3) of Section 1 of Rule 8."

"(c) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g-3) of Section 1 of Rule 8."

The term "work week," for regularly assigned employees, is defined in Rule 8(i) as:

". . . a week beginning on the first day on which the assignment is bulletined to work. . . ."

The Carrier argues, in substance, as follows: (1) Because of the change in work week and rest days (effective February 16, 1956). Claimant had a **new** work week; (2) Claimant did not work more than forty hours or five days in his new work week; (3) Since February 16 was a work day and not a rest day, Claimant was properly compensated at the pro rata rate, (4) A sustaining decision would nullify the provisions of Rule 8(1). In support of its contentions Carrier cites several Awards, including 6281, 5854, 5998, 6211 and Awards 14 and 15 of Special Board of Adjustment No. 136.

While it is true that arguments similar to those presented here by the Carrier have been sustained in many cases, there are also a line of decisions to the contrary, including Awards 7319, 7324, 8144, 8868, 9243, 9548 and Awards 7 and 8 of Special Board of Adjustment No. 186. Significantly, in the most recent series of decisions this Board has consistently rejected Carrier arguments similar to those offered here. It would now appear to be settled that in situations such as this (and where contractual provisions are the same) time and one-half is to be paid when an employee works six consecutive days in a work week because of Management's decision to change his rest days. In other words, (1) The exceptions of Rule 5(b) and (c) do not apply since Claimant did not move "from one assignment to another," (2) When Rule 8(1) is read in conjunction with Rule 5 and other relevant clauses, it becomes clear that the parties did not affirmatively provide that rest days may be changed without incurring overtime liability, nor did they provide a specific exception in the overtime rule for such contingency.

In the case at hand, then, the evidence shows that Claimant worked 6 consecutive days commencing Saturday, February 11. He is therefore entitled to time and one-half for work performed on February 16, the sixth day. This conclusion is consistent with this Board's findings in Awards 10674, 10530, 10497 and 9962 (all decided subsequent to the submissions in the present docket), as well as the previously cited Awards.

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 3rd day of August 1962.