

Award No. 10755

Docket No. TE-9458

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

Claim No. 1

1. Carrier violated the terms of the Agreement between the parties when in changing the assigned rest days of Agent H. E. Young, Paola, Kansas, it caused him to lose a day's work, or eight hours, on Friday, February 10, 1956.
2. Carrier shall compensate H. E. Young for eight hours' pay at the straight time rate for February 10, 1956.

Claim No. 2

1. Carrier violated the terms of the Agreement when in changing the assigned rest days of Telegrapher R. L. Beal, Fort Worth, Texas, it caused him to lose a day's work, or eight hours, on Saturday, February 18, 1956.
2. Carrier shall compensate R. L. Beal for eight hours' pay at the straight time rate for February 18, 1956.

EMPLOYEE'S STATEMENT OF FACTS: Claimant H. E. Young was the agent at Paola, Kansas. He had assigned hours of 8:00 A. M. to 5:00 P. M., with a work week of Monday through Sunday, with Saturdays and Sundays as rest days. On Wednesday, February 1, 1956, Carrier notified him that effective 3:00 P. M. on Sunday, February 5, the first shift position at Paola would be abolished. The first shift position had previous to this time a work week beginning on Sunday with Friday and Saturday as rest days. It had assigned hours 7:00 A. M. to 3:00 P. M. When the first shift position was abolished, the Carrier reclassified the position held by Mr. Young to agent-telegrapher and he was assigned a new work week beginning on Sunday with Friday and Saturday as assigned rest days. Claimant Young worked his position Monday, January 30

OPINION OF BOARD: This claim is in two parts. Claim No. (1) is on behalf of Agent H. E. Young of Paola, Kansas, and the claim is that the Carrier violated the terms of the agreement when, in changing the assigned rest days of the Claimant it caused him to lose a day's work or eight (8) hours of work on Friday, February 10, 1956, and the request is that the Carrier compensate H. E. Young for eight hours pay at the straight time rate for February 10, 1956.

The second claim is on behalf of Telegrapher R. L. Beal of Fort Worth, Texas, and it is claimed that the Carrier violated the terms of the agreement when, in changing the assigned rest days of Mr. Beal caused him to lose a day's work or eight (8) hours on Saturday, February 18, 1956, and the request is that the Carrier compensate Mr. Beal for eight hours pay at the straight-time rate for February 18, 1956.

Previous to February 6, 1956, Carrier maintained separate positions of Telegrapher and Agent at Paola, Kansas, and Claimant Young occupied the Agent position. The rest days assigned to him in the Agent position were Saturday and Sunday.

By written notice dated February 1, 1956, the Telegrapher position was abolished effective with the close of the tour of duty on Sunday, February 5, 1956, and effective Monday, February 6, 1956, the Agent position was changed to that of Agent-Telegrapher with assigned rest days of Friday and Saturday.

After February 6, 1956, Claimant Young continued to occupy the Agent-Telegrapher position observing the rest days of the latter position on Friday and Saturday.

His claim is that he be paid a day's pay for February 10, 1956.

Prior to February 18, 1956, Carrier maintained the Telegrapher position on each of three tricks at Fort Worth, Texas. Claimant Beal occupied the second trick Telegrapher position which had assigned rest days of Sunday and Monday. The third trick Telegrapher position was abolished effective seven o'clock A. M., February 18, 1956, and by written notice dated February 14, 1956, effective Saturday, February 18, 1956, the rest days assigned the second trick Telegrapher were changed from Sunday and Monday to Saturday and Sunday. Beal was assigned a three-hour call and the Carrier permitted him to work such call on Saturday, February 18, 1956. He was paid for a three-hour call at time and one-half, or for four and one-half hours at straight-time. The claim is for the difference between the eight hours pro rata rate to which he was entitled and the four and one-half hours he was paid, or a net of three and one-half hours at pro-rata time.

Claimant Beal continued to occupy the second trick Telegrapher position subsequent to February 18, 1956, observing the rest days thereof, Saturday and Sunday, February 18th and 19th, 1956.

The employees rely upon the provisions of Article II-A, Section (1); (i), and (t). In support of their position the employees quote Awards 6519, 7319, 7324, Special Adjustment Award 137, Awards 59 and 60, 3923, 3924, 3925, 3926, 3927, 4522, 4523, 5066, 5129 and many others.

In Award No. 8144 we find the following statement: "The identical issue involved herein has been before this Division numerous times and

it is impossible to harmonize the conflicting awards thereon which have been rendered by the Division with the assistance of different referees."

The Carrier asserts that the Agreement contains no guarantee of any number of days of work per week and that the Carrier followed all of the provisions of the Agreement in changing the work weeks of the two Claimants. The Carrier's specific claim that there is no guarantee in the Agreement before us as may be found in some Telegraphers Agreement or a weekly guarantee as may be found in other agreements, and that it was not the intention of the parties to the Agreement under consideration to create a weekly guarantee of five days.

Article II-A, Section (1), — (a) reads as follows:

"The Carriers will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in this Article II-A, a work week of forty hours, consisting of five days of eight hours each with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carriers operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement which follow;"

Article II-A, Paragraph (p) reads as follows:

"Guarantees. (Taken from Conference Committee Agreement March 19, 1949, Article II, Section 3(f). All existing weekly and monthly guarantees shall be reduced to five days per week. Nothing in the agreement shall be construed to create a guarantee of any number of hours or days of work where none now exist."

This Referee has searched the Agreement, the Record, and the Awards cited by both parties hereto and is unable to find a rule in the Agreement to support the payments claimed on the basis the Claimants worked under a weekly guarantee of five days. It is well settled that this Board cannot, by its Awards, supply that which is not in the Agreement, reform the Agreement or re-write the Agreement for the parties. This Referee can find nothing in the rules to support the payments claimed and has no alternative but to deny the claim.

We agree with the statements made in the Carrier's Brief that the work days and rest days attached to a position and not to the occupant of the position.

An analysis of the apparently conflicting Awards of this Board discloses that nearly all, but not all, of the Awards are distinguishable by one significant and important point, and that is the Agreements involved in many of these Awards contained guarantee rules which are not contained in the present Agreement before us.

Many other points are raised by both parties but in view of the above conclusion reached by this Referee it does not appear to be necessary to discuss them in connection with this set of facts.

The claim is hereby denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1962.