

Award No. 11322

Docket No. TE-10083

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad, that:

1. Carrier violated the agreement between the parties when and because it failed and refused to compensate Agent-Telegrapher C. A. Bell, Texas Creek, Colorado, at the rate of time and one-half for services performed on Sunday and Monday, rest days, December 18 and 19, 1955;

2. Carrier further violated a special agreement, dated February 20, 1956, in which it agreed to settle this claim on the basis of a similar claim decided by Award No. 8 of Special Board of Adjustment No. 186.

3. Agent-Telegrapher Bell, Texas Creek, Colorado, shall now be paid the difference between straight time rate, which he was paid, and the rate of time and one-half, which he should have been paid under the terms of the agreement.

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

C. A. Bell was regularly assigned to the position of Agent-Telegrapher at Texas Creek, Colorado, a seven day position with assigned hours 7:50 A.M. to 3:50 P.M., and assigned rest days Sundays and Mondays. The rest days were changed to Thursdays and Fridays. This change in rest days resulted in claimant Bell starting a work week on Tuesday, December 13, 1955 and working as follows:

Tuesday — December 13

Wednesday — December 14

Thursday — December 15

that it is bulletined to work following the change of rest days. In the case at issue, this was Saturday, December 17, 1955, with rest days Thursday and Friday, December 22 and 23, 1955. It is obvious, therefore, that Sunday and Monday, December 18 and 19, 1955 were not rest days under Claimant's new work week — see Awards 7319, 7320 and 7719.

Carrier attempted through the National Mediation Board to reconvene Special Board of Adjustment No. 186 and have that Board render an interpretation as to provisions of its Award No. 7 in order to determine its applicability to the case at hand. So far it has not been successful.

Carrier holds its denial of the case at issue is fully supported by Award No. 7 of Special Board of Adjustment No. 186 as well as Awards 7319, 7320 and 7719 of your Honorable Board. The claim must, therefore, be denied.

All data in support of Carrier's position have been submitted to the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant, C. A. Bell, was an Agent Telegrapher at Texas Creek, Colorado. His was a seven day position with assigned hours 7:30 A.M. to 3:50 P.M. and with Sunday and Monday as rest days. Effective Saturday, December 17, 1955, Claimant's rest days were changed from Sunday and Monday to Thursday and Friday. As a result of this change Claimant worked the following days starting with the work week on Tuesday, December 13, 1955:

Tuesday, December 13, 1955

Wednesday, December 14, 1955

Thursday, December 15, 1955

Friday, December 16, 1955

Saturday, December 17, 1955

Sunday, December 18, 1955

Monday, December 19, 1955

Tuesday, December 20, 1955

Wednesday, December 21, 1955

Claimant worked nine consecutive days at straight time pay. He claims the difference between one and one half times his rate and straight time pay he received for Sunday and Monday, December 18 and 19, 1955.

On February 20, 1956, Carrier's Director of Personnel wrote to the Organization's General Chairman as follows:

"Your letter January 25, 1956, File R-939, appealing from decision of Superintendent, Pueblo Division, and our conference January 27, 1956, in connection with the following case:

'This is claim for Mr. C. A. Bell, Texas Creek, for the difference between pro rata and time and one-half for 8 hours each day, December 18, and December 19, 1955.'

While claim is denied, Carrier is agreeable to holding it in abeyance and settle on the basis of award rendered by Third Division, National Railroad Adjustment Board, on similar claim from this property now before that tribunal for decision identified by our File TE-4-55."

File TE-4-55 involved a claim by Agent-Telegrapher, W. E. Fowles, Salina, Utah, for time and one half for work performed on Friday, January 28, 1955, a rest day. This claim was withdrawn from the Third Division and, by agreement of the parties, submitted to Special Board of Adjustment No. 186. In Award No. 8 this Special Board of Adjustment said:

"This claim involves interpretation of the rules covering change of rest days.

Effective on Friday Claimant's rest days were changed from Thursday and Friday to Sunday and Monday and claim is made for being required to work on Friday, the effective day of the change, on the ground that he was required to work on a rest day.

The issues and applicable awards here are essentially the same as those involved in Award 7 except that here claimant relies on Rule 7 (C) while in Award 7, claim was based primarily on Rule 6 (A)."

That claim was sustained.

Carrier argues that this claim should not be allowed because "following the change in rest days, the employe began work on the first day of the new work week . . ." In Awards Nos. 7 and 8 Special Board of Adjustment No. 186 sustained the claims because "the new work week began on the first day that it was bulletined to work following the change of rest days. . . ."

Carrier agreed on February 20, 1956, to abide by a decision in File TE-4-55. Award No. 8 of Special Board of Adjustment No. 186 sustained that claim. We should not permit Carrier to abrogate that agreement made in good faith. In view of this, it is not necessary for us to review the numerous Awards of this Board on this subject. We mention only Awards 11036 (Boyd), 10901 (Ray), 10674 (Ables), 10530 (Hall) as a few which are applicable and support the claim.

On the basis of all the facts, the claim must be allowed.

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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.