

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Company of Texas that:

1. Carrier violated the terms of the Agreement between the parties when, on Saturday, February 22, 1958, it refused to assign extra Telegrapher T. J. Cates, who was idle and available, to perform the rest day relief work on the position of agent-telegrapher at Addison, Texas, and instead required the regularly assigned agent-telegrapher to work six consecutive days in his work week and fill the position on his assigned rest day, Saturday, February 22, 1958.

2. Carrier shall now compensate extra Telegrapher T. J. Cates for 8 hours at time and one-half rate (\$3.36 an hour), the exact amount he would have earned on February 22, 1958, had the Carrier not violated the Agreement as set forth in (1) above.

EMPLOYEES' STATEMENT OF FACTS: Addison, Texas is a one-man agent-telegrapher station, located on the St. Louis Southwestern Railway Company of Texas (now called Southern Division) seniority district. It is a seven-day position of the sort comprehended by Article 7, Section 1 (d) of the Supplemental Agreement between the parties dated July 28, 1949, effective September 1, 1949.

C. R. Claybrook is the regularly assigned occupant of this Addison position, and is assigned a work week of forty (40) hours, consisting of five days (Monday through Friday) of eight (8) hours each, with two consecutive rest days (Saturday and Sunday) in each seven (7), pursuant to Article 7, Section 1 (a) of the said Supplemental Agreement which provides in part that:

"The Carrier will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in this Article 7, a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven (7); * * *."

Article 7, Section 1 (e), first paragraph provides:

Hour Week Agreement by interpretations made by the Forty Hour Week Committee. We point out that in the foregoing awards the conclusions were correct irrespective of Decision No. 2 in that it was not shown that work of the regular employe's position was performed on the holidays in question. The holding that Decision No. 2 had no application in those cases was a gratuitous one not necessary to the decision, and is not, therefore, a binding precedent on that point."

It will be noted that Interpretation No. 2 by the Forty Hour Week Committee was held to be controlling.

It is clear that the claim is not supported by the rules and Carrier respectfully submits that the claim should be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves a difference of opinion between the parties as to which of two employes had a superior right to the work required on a rest day which was not a part of any assignment and which also happened to occur on one of the holidays given special attention by the Agreement.

The undisputed facts are quite simple. The employe regularly assigned to the position of agent-telegrapher at Addison, Texas, has rest days of Saturday and Sunday each week. Work is normally required to be performed on both rest days, but at the time this claim arose these days had not been included in a regular relief assignment and thus were correctly treated as being subject to the provisions of Article 7, Section 1 (n), which reads:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Accordingly, the work had been assigned to extra employes when they were available and had not otherwise worked 40 hours in their work week. When such extra employes were not available the regular employe was used.

On the rest days of Saturday and Sunday, February 22 and 23, 1958, extra employes were available, and one of them was used on Sunday, February 23. But the Carrier directed the regular employe to perform the required work on Saturday, the 22nd, a holiday.

Extra telegrapher Cates filed claim for a day's pay at the holiday rate of time and one-half, the contention being that under the rules of the Agreement, as similar or identical rules have many times been interpreted and applied by awards of this and other Boards of Adjustment, such work must be assigned to an available extra employe in preference to the regular employe.

The Carrier declined the claim solely on the ground that the interpretation contained in Decision No. 2 of the 40 Hour Week Committee, concerning the

prototype of Article 7, Section 1 (n), positively requires use of the regular employe when work is required to be performed on a holiday which is not a part of any assignment.

The Employes counter this contention by a showing that these particular parties had no dispute concerning the "Work on Unassigned Days" rule and contending that the portion of Decision No. 2 dealing with that rule thus has no application. The Carrier cites Award 7134 in refutation of the Employes' contention on this point.

The Employes cite a large number of Awards which clearly hold that work on rest days must be assigned first to a regular relief employe if there be one and he is available; secondly to a qualified and available extra employe; and if neither a relief or extra employe is available, to the regular employe on an overtime basis.

The principle relied upon by the Employes and set forth in the awards cited is sound. As stated by Referee Hornbeck in Award 9393, "The rule has become stare decisis."

But our problem is what effect, if any, Decision No. 2 of the 40-Hour Week Committee is to have on a situation where work is required to be performed on a rest day, which not only is "not a part of any assignment", but also is a "holiday which is not a part of any assignment."

Decision No. 2 of the 40-Hour Week Committee plainly removes work on holidays that are not a part of any assignment from operation of the principle relied upon by the Employes. The Carrier has no option in such a case, but must use the regular employe. There are no exceptions and the language is not susceptible of interpretation.

The Employes' contention that the decision should not apply because these parties had no dispute about the rule to which it refers is quite appealing, but is not sound. The same contention, made by a Carrier, was forcefully rejected by this Board in Award 7134. There it was said:

"... It would border on the ludicrous to say that a provision of the Forty-Hour Week Agreement meant one thing to one signatory to it and something altogether different to another ..."

We reaffirm and adopt the reasoning of Award 7134 as applicable here. This does not, however, impair in any way the line of awards, exemplified by Award 9393, relied upon by the Employes. They merely are not in point where work is required on a holiday which is not a part of any assignment.

We conclude that in accordance with the above opinion the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 12th day of February 1964.