

Award No. 12471
Docket No. TE-11089

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to properly compensate D. G. Dougherty, Agent-Telegrapher at Albright, Nebraska for work performed on January 1, 1958, a regularly assigned rest day which was also a holiday.

2. Carrier shall be required to compensate D. G. Dougherty for eight hours at the time and one-half rate, in addition to the amount already paid, on January 1, 1958.

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

At the time cause for this claim arose, D. G. Dougherty was the regularly assigned occupant of the position of Agent-Telegrapher at Albright, Nebraska, a seven-day position with assigned hours 8:30 P.M. to 5:30 A.M. (one hour meal period), assigned rest days Tuesdays and Wednesdays of each week, relieved on rest days by Regular Relief Position No. 44.

The occupant of Relief Position No. 44 was unable to protect his assignment on Wednesday, January 1, because of illness and Agent Dougherty was notified during the afternoon of January 1 that he would be required to fill the position.

Claimant Dougherty worked the position on Wednesday, January 1, 1958 which was one of his assigned rest days and, in addition, one of the designated holidays. The claimant initiated the claim by submission of a time slip (Form CT-8) which was declined by Superintendent D. J. Smith without giving any reasons therefor. The claim was progressed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits 1 through 9.

The question which your Board has been asked to resolve by the claimants in his favor is directly opposed to this principle. The employees would have your Board take two unrelated rules of the agreement and read them in such combination that unwarranted and unauthorized pyramid penalties result.

In view of the fact that Rule 13 very definitely states that there shall be no overtime on overtime, the Carrier submits that the claimant was properly paid for his services on January 1, 1958 and we respectfully request your Honorable Board to deny the claim of the employees.

OPINION OF BOARD: The Claimant was the occupant of the position of Agent-Telegrapher at Albright, Nebraska. On January 1, 1958 the Claimant was required to fill the position on his rest day, which was also a paid holiday. Thus the Claimant seeks compensation at the rate of time and one-half for holiday pay under Rule 16, Section 2 of the current agreement in addition to compensation received at the rate of time and one-half under Rule 16, Section 1(m) Service on Rest Days.

The contention of the Carrier was that under Rule 13, and 16, the overtime Rules the Claimant is entitled to one penalty payment not both. Furthermore, Rule 13, expressly provides that there shall be no overtime on overtime. Thus as the Claimant received compensation at the overtime rate of time and one-half for service on his rest day no further compensation need be paid.

The issues arising from this claim have been resolved in Awards 10541, 10679 of this Division which sustain the position of the Claimant.

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 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 30th day of April 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12471
DOCKET TE-11089
Referee Kane**

The Carrier Members' Dissent to Award 10541 is hereby adopted as the dissent in this case.

**W. M. Roberts
G. L. Naylor
R. E. Black
W. F. Euker
R. A. DeRossett**