

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE NEW YORK, CHICAGO AND ST. LOUIS  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago & St. Louis Railroad, that:

1. The Carrier violated the parties' Agreement when on March 15, 1958, it required Rest Day Relief employe O. M. Carnahan to report for duty at Payne, Ohio, on his assigned rest day and worked him from 9 A.M. to 11 A.M., for which it failed and refused to pay him a basic day's pay of 8 hours at the time and one-half rate.

2. The Carrier shall, because of the violation set out above, be required to compensate Claimant Carnahan for 8 hours at the time and one-half rate, less the amount already paid him for work performed on March 15, 1958.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an Agreement by and between the parties to this dispute effective June 1, 1948, as amended. (Current agreement effective January 1, 1959.)

At page 59 of said Agreement are listed the positions existing at Latty, Ohio, on the effective date of the Agreement. The listing is:

Latty.....	Agent and Operator-Leverman.....	\$1.35
	2nd Trick Operator-Leverman.....	1.26
	3rd Trick Operator-Leverman .....	1.26

The amendment to the Agreement of June 1, 1948, pertinent here, was consummated on July 24, 1950, which had the effect of amending the existing agreement to conform to the Agreement made in Chicago, Illinois, March 19, 1949, known as the 40-Hour Week Agreement, and in settlement of a disagreement between the parties as to the proper payment to be made to employes working on their assigned rest days as provided in Article II, Section 3, Paragraph (b) of the National Agreement signed March 19, 1949. The dispute was

to this Board on its merits. It can also be said that the circumstances in that case were different. The referee cited only one rule, the rest day rule, as the basis of his opinion.

In this case other rules must be considered if even the proper rate of pay per hour is to be determined. In that case the work was performed on two shifts of the two seven-day positions. In this case there was a two-hour call which would normally be handled by the agent and operator who occupied a five-day position. The Carrier does not agree that the reasoning in one opinion relating to a different property modifies the controlling rules of the agreement on this property, particularly so when that opinion is based on an entirely different set of circumstances.

In Award 6408, rendered on this property, Referee Whiting participating, this Board had this to say in regard to Rule II A(1) on which the Employees rely:

"Thus, it is clear that part II A(1) was not intended to change the rights or obligations of either party under Rule 11(b) and when that part II makes provision for payment of time and one-half to 'employees required to perform service on their assigned rest days', it is referring to the rest days of the position to which the employee is then assigned, even though such assignment is merely a temporary relief or emergency assignment under Rule 11(b)."

On the basis of that award, it is clear that claimant in this case was performing service on the agent's position at Payne on his rest day. It is therefore required that he be paid in accordance with Rule 4½ II B(2). In this case, it is unnecessary to meet any situation where claimant might have been required to perform work on a six or seven-day position or do other work because in accordance with the governing rules, he took the conditions of the particular position he worked.

The claim is without merit and must be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** O. M. Carnahan's regular duties are as follows:

On Sundays and Mondays he relieves the first trick at Latty, Ohio. On Tuesdays and Wednesdays he relieves third trick at Latty. On Thursday he relieves third trick at N. E. Tower. Fridays and Saturdays are his own rest days.

On Saturday, March 15, 1958, he was required to perform agent's duties from 9 A. M. to 11 A. M. at Payne, Ohio, which is a five-day position. He was compensated according to the provisions pertaining to work on rest day by an employee of a five-day position.

Claimant contends that he should have been compensated according to the provisions of Rule 4½ II A(1), or for 8 hours at time and one-half. Rule 4½ II A(1) provides in part as follows:

**"RULE 4½ — SERVICE ON REST DAYS.**

I. This rule is for the sole purpose of determining the compensation for employees who are required to work on their assigned rest days. It is not to be used to create, enlarge or take away any rights or obligations which the carrier or the employees may have by virtue of other rules in this agreement, including those adopted or

revised to conform to the March 19, 1949 Agreement. Among others, it is to have no bearing on rules in effect on and after September 1, 1949, relating to the rights of the employees, if any, or on the obligation of the Carrier, if any, to have positions filled on any day of the week.

II. Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

A(1) Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work.

(2) When a position is regularly required on Sunday to work more than three hours or two or more tours of duty, the position shall be considered in the same category as those referred to in paragraph A(1)."

We agree with this contention. In Award 7828 (Coffey), the Board applied an identical rule in an identical situation on another property. There the Board stated:

"According to the record, claimant regularly relieves on a position that requires a Sunday assignment of the regular week-day hours. On the day in question, he performed service on his assigned rest day within the regular hourly limits of a week-day assignment. We hold, therefore, that the basis of pay is that provided by Rule 7 (c)-1."

We find no intention to distinguish between regular assigned employees and employees regularly assigned to relieve them insofar as compensation or work on rest days is concerned. See Award 11076 (Dorsey).

**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 has been violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.