

Award No. 12600
Docket No. TE-11285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. The Carrier violated the parties' Agreement when it failed or refused to compensate Telegrapher H. H. Hartman, 1st shift Telegrapher, Lafayette, Indiana, at the time and one half rate for services performed on Friday, July 25 and Saturday, July 26, 1958, rest days of the position occupied for which he received the pro rata rate.

2. The Carrier shall, because of the violation set forth above, compensate H. H. Hartman for the difference between the straight time rate paid him and the time and one-half rate due for work performed on his assigned rest days.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

At Page 26 of said Agreement are listed the positions existing at Lafayette on the effective date of the Agreement. The listing reads:

Location	Title	Rate per Hour
Lafayette, Ind.	1st T	\$1.85½
	2nd T	1.85½

H. H. Hartman, Claimant, was and is the regularly assigned occupant of the 1st shift Agent-Telegrapher's position at Lafayette, Indiana. Assigned hours and work week prior to the change which precipitated this dispute, were 6:30 A. M.-2:30 P. M., Sunday through Thursday, Friday and Saturday, rest days.

ing to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

In its Award No. 4439 this Division held:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' Agreement as they are written. It is not our privilege or right to add thereto, and when a rule specifically lists the situations to which applicable it thereby excludes all those not included therein." (Emphasis ours.)

As it is provided in Section 2, paragraph (c) of Rule 7 of the telegraphers' agreement that rest days may be changed, such change, if made, precludes payment for work performed on rest days as provided for in Section 2, paragraph (b) of that rule, for obviously changed rest days would create new work days and work performed on such new work days would not be on rest days to which Section 2, paragraph (b) would have application.

The claimant did not work in excess of five days in the scheduled work week effective at 11:59 P.M., July 24, 1958; therefore, the claim is without merit and should be denied.

A work week consisting of five (5) days of eight (8) hours each with two (2) consecutive days off in each seven is not inflexible and absolute. That work week, established by the terms of Rule 7, Section 1, Paragraph (a) of the Agreement is subject to all of the provisions of Rule 7 which follow and which includes the provisions permitting changing of rest days on giving of proper notice (Rule 7, Section 2, paragraph (c)) and the definition of a work week (Rule 7, Section 1, paragraph (i)).

Rule 7 contains no unqualified provision requiring payment of time and one-half to an employe required to work in excess of five (5) consecutive days, neither does it contain any provisions requiring that any employe who works in excess of five (5) consecutive days as a result of changing his assigned days off will be entitled to time and one-half for consecutive days worked in excess of five.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. Claimant was assigned as a telegrapher at Lafayette, Indiana, to work from 6:30 A.M. to 2:30 P.M. Sunday through Thursday with rest days Friday and Saturday. On July 19, 1958, he was notified that effective 11:59 P.M., July 24, 1958, his rest days would be Sunday and Monday. In accordance with that notice, Claimant worked seven consecutive days from Sunday, July 20, 1958 through Saturday, July 26, 1958, at straight time pay.

Claimant asks for the difference between the time and one-half rate and the straight time pay he received for Friday and Saturday, July 25 and July 26, 1958.

Carrier contends that Friday and Saturday July 25 and 26, were the fourth and fifth days of Claimant's changed work week, and not the sixth and seventh days of his old work week. Therefore, Claimant did not work more than five days in any one assigned work week.

This issue has been before this Division on numerous occasions. The most recent decisions of the Board have consistently sustained claims for time and one-half pay for the sixth consecutive day worked because the Carrier changed Claimant's rest days. This is now the established principle of this Division. See Awards 9962, 10497, 10530, 10674, 10744, 10901, 11036, 11322, 11549, and 12319 among others.

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 Employee involved in this dispute are respectively Carrier and Employee 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1964.