

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

1. The Carrier violated the parties' Agreement when, in changing the assigned rest days of S. F. Pope, regularly assigned to the 1st shift telegrapher position at Longmont, Colorado, it suspended him from work on Saturday, April 19, and Sunday, April 20, 1958.

2. The Carrier shall, because of the violation set forth above, compensate S. F. Pope for two additional days' pay at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 1, 1948, including changes and agreed-to interpretations to the date of the re-issue of the Agreement, January 1, 1955, with rates of pay effective December 3, 1954, and as otherwise amended.

S. F. Pope, claimant, was the regularly assigned occupant of the 1st shift telegrapher's position at Longmont, Colorado, and as such, had a work week of Saturday through Wednesday, rest days Thursday and Friday.

On or about April 14, 1958, the Carrier advised Mr. Pope that effective April 19, 1958, his rest days would be changed from Thursday and Friday, to Saturday and Sunday.

Claimant's old and new work weeks are reproduced below:

Saturday	April 12	Work day	Saturday	April 19	Rest day
Sunday	April 13	Work day	Sunday	April 20	Rest day
Monday	April 14	Work day	Monday	April 21	Work day
Tuesday	April 15	Work day	Tuesday	April 22	Work day

claimant in each of the two work weeks here involved. In other words, claimant did not lose a day's pay as a result of the aforesaid change in rest days.

AWARD: Claim denied." (Signatories not reproduced.)

In each of the cases covered by Awards 5854, 6211 and 6281, the controlling agreement included a rule similar in all material respects to the aforementioned Rule 11 on the property of the respondent Carrier, which, of course, was taken from the National 40-Hour Week Agreement. It is not clearly shown in the case covered by Award 5998 whether or not a similar rule is contained in the controlling agreement, but it is highly significant to note that your Board held in that case "... that Award 5854 is controlling."

It is also of signal import that Award No. 10 of Special Board of Adjustment No. 173 squares on all fours with the instant case and was issued on March 24, 1958, i.e., just one month before the instant occurrence.

It should be rather unmistakable that the change in rest days was made under clear and explicit provisions of Rule 11 of the Telegraphers' Agreement and was made only after proper advance notice requirements of such rule had been conformed to. Rule 11 nor any other article of agreement guarantees or even implies that two days' pay for two properly assigned rest days that are not worked will be paid in situations in which a Telegrapher's rest days are advanced by proper change therein pursuant to pertinently applicable provisions of the Telegraphers' Agreement. Absolutely no violation of said Agreement occurred when such change in rest days was properly made and the allegation of the Petitioner that "The Carrier violated the parties' Agreement" is grossly fallacious.

The Petitioner is in pursuit of a claim in this docket which contravenes a specific rule of the controlling Agreement. That is Rule 11. He is asking your Board to revise Rule 11 to conform to his unsupported contentions in the premises or to write a new rule to meet the demands embodied in this claim, his purpose, beyond all element of doubt, being to create a penalty which the parties to the Agreement never intended to establish. There has been no evidence presented by either the claimant or the Petitioner that the Carrier in any way attempted to evade or circumvent the Agreement and there most certainly has been no proof shown by the Petitioner that "The Carrier violated the parties' Agreement," as alleged.

In conclusion, the Carrier urges that your Board not jeopardize the right of Management under pertinent rules of the Agreement to change rest days and work weeks to meet changing service requirements, except as the Organization can definitely show that the provisions of some agreed-to rule, understanding or well-established practice positively prohibits the Carrier so doing. The Carrier, in the instant circumstances, most assuredly was not in violation of any part of any agreement in effect on the property of the Carrier in so doing here.

The evidence herein and herewith presented conclusively shows, and the Carrier respectfully reiterates, that the instant claim is completely devoid of agreement substantiation; therefore, should, for the reasons summarized herein, be unequivocally denied.

OPINION OF BOARD: Contention in this case arose out of the change of assigned rest days of S. F. Pope, Carrier's first shift telegrapher at Longmont, Colorado.

Claim was made this change suspended him from work on Saturday, April 19, 1958, and Sunday, April 20, 1958, in violation of Rule 4 and Rule 11, Section 1 (a) of the Agreement of October 1, 1948, between the parties hereto.

Facts of this case disclose that Carrier rearranged the rest days of the Claimant from Thursday and Friday to Saturday and Sunday effective April 19, 1958, thus giving Claimant at time of change four consecutive rest days and eliminating by this process two working days for the Claimant from that calendar year or two eight hour periods from what would have been the next consecutive 40 hour period in violation of the rule:

"The company will establish, . . . for all employees, . . . a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; . . ."

The impact of the Carrier's action has been to violate Rule 11, Section 1 (a). The claimant has been deprived of two eight hour days.

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 the Agreement has been violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.

CARRIER MEMBERS' DISSENT TO AWARDS 12721 - 12722,

DOCKETS TE-11057 - TE-13722

(Referee Reagan)

For the reasons previously set forth in our dissent to Award 11474, we dissent to the Majority's decisions in these cases.

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