

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINE RAILROAD COMPANY

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

1. Carrier violated the Agreement between the parties when it failed and refused to compensate Clerk-Operator M. D. Boyd, Bradley, Florida, for eight (8) hours at the time and one-half rate for eight (8) hours' service performed on November 3, 1958.

2. Carrier shall be required to compensate the claimant, M. D. Boyd, for the difference between the straight time rate which he was paid and the time and one-half rate which he should have been paid for eight (8) hours' service performed on November 3, 1958.

EMPLOYES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The schedule agreement was effective October 1, 1944. This agreement and all others in effect between the parties are by reference made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes, and failed of adjustment. This Board has jurisdiction of the parties and the subject matter under the provisions of the Railway Labor Act, as amended.

1. At all times relevant hereto claimant M. D. Boyd owned position classified as Clerk-Operator at Bradley, Florida, with assigned hours of service 3 P.M. to 11 P.M.

2. At all times prior to dates involved herein claimant had an assigned work week as follows:

those involved in Award 7 except that here claimant relies on Rule 7(c), while in Award 7, claim was based primarily on Rule 6(a).

Like award should follow."

We are attaching copies of Awards Nos. 7 and 8 of Special Board of Adjustment No. 186 as ORT Exhibits 7 and 8.

It must be remembered that the notice of October 29th did not purport to effect any change until November 3, 1958. This date, October 29th, has no significance except to comply with the 72 hour notice provisions. The effect of the notice on November 3rd was to require Mr. Boyd to work on that date. It is obvious that the rules forbid Carrier to deprive an employee of two rest days after he has worked the five work days of the assignment. In a series of awards (6970, 6971, 6972, 6978 and 7391), this Board held that where an extra employee worked the five work days of an assignment he was entitled to compensation at the time and one-half rate for services on the sixth and seventh days, whether he was used on that position or another or other work. In Award 5586 the Board sustained the claim of Employees. Where a change of rest days resulted in the loss of a day's work, this Board has sustained the position of Telegraphers in Awards 6519, 7324, 8144 and 8145.

It is true that the change in work weeks promulgated in the October 29th notice made Monday the first day the assignment was bulletined to work. But this does not mean that Monday, November 3rd, could be designated as such date of beginning. This date was an earned rest day, and the claimant could be used only on the payment of time and one-half rate, just as is provided in Rule 12, Section 1 (m).

CONCLUSION

It is clear that claimant was required to perform service on a day which under Rules 7, 12 and the letter of understanding the Carrier had agreed to pay time and one-half pro rata rate. Carrier has arbitrarily and capriciously refused to allow him the compensation to which he is entitled under the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: After a careful study of the record, the Board is of the opinion that the issue presented by this dispute is the same as has been before us on numerous occasions: Award 12319 and those cited therein, among others.

The issue, having been decided by this line of awards, the claim will be sustained.

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 23rd day of July 1964.