

**Award No. 12819**  
**Docket No. TE-10531**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Louis Yagoda, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN RAILWAY COMPANY**

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

1. Carrier violated the Telegraphers' Agreement when it failed and refused to properly compensate E. D. Shelton for service performed on his rest days, June 1 and 2, 1957, on the third trick telegrapher position John Sevier, Tennessee.

2. Carrier violated the Telegraphers' Agreement when it failed and refused to promptly notify E. D. Shelton that overtime would not be allowed for service performed on his rest days, June 1 and 2, 1957.

3. Carrier shall compensate E. D. Shelton, in addition to compensation already paid, the sum of \$8.70 per day for June 1 and 2, 1957, total amount due \$17.40.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant E. D. Shelton is an extra employee. Mr. A. H. Needham is the regular assigned first shift telegrapher at Coster, Tennessee. Mr. Needham began a fifteen day vacation on May 18, 1957. Carrier assigned Claimant Shelton to perform the work on the first shift telegrapher position during the vacation vacancy of Mr. Needham, beginning May 18.

The first shift telegrapher position at Coster, Tennessee, has a work week beginning on Monday with Saturday and Sunday as assigned rest days. The vacation vacancy of Mr. Needham extended from May 18 to June 5, 1957. However, the Carrier on Thursday, May 30, 1957, directed Claimant Shelton to forego further work on the vacation vacancy at Coster and assigned him to work the third shift telegrapher-clerk position at John Sevier, Tennessee, beginning Friday, May 31. The Carrier then ordered a junior extra employee to work the remainder of the vacation vacancy at Coster, Tennessee, until the regular incumbent returned June 5, 1957.

Claimant Shelton performed the following work on the following assignments in his work week beginning Monday, May 27, through June 2:

**OPINION OF BOARD:** Claimant Shelton was an extra employe, properly assigned under the applicable rules to take the place of a regularly assigned employe who was on vacation from May 18 to June 5, 1957. Mr. Shelton worked that assignment without incident through the first work week. Then he worked during the second work week from Monday, May 27, through Thursday, May 30, then was required by the Carrier to transfer to another temporary vacancy, where he worked the work days of that assignment until June 15.

Thus, beginning on May 27, Mr. Shelton worked nine consecutive days, four of them on the original assignment, and five on the job to which he was diverted. He claimed payment for the sixth and seventh of these consecutive days at the rate of time and one-half. The Carrier allowed only the straight time rate and declined the claim for the difference through successive stages of handling up to and including the highest officer of the Carrier designated to handle such cases. The resulting dispute presents the question before us for decision.

Both parties rely primarily upon the provisions of Rule 9 as revised to conform with the 40-hour week rules effective September 1, 1949. Reduced to its simplest terms, the Employees' contention is that none of the exceptions enumerated apply and since Mr. Shelton was required to work more than five days, or in excess of forty hours, in his work week which began on Monday, May 27, the overtime rate was properly applicable for the sixth and seventh days as claimed. The Carrier contends that since Shelton did perform work on those days "due to moving from one assignment to another" the exception applies; therefore, the straight time rate was proper.

Thus, the ultimate question for decision is whether, under the circumstances, Shelton performed work on the sixth and seventh consecutive days "due to moving from one assignment to another."

Claimant Shelton did not change assignments voluntarily or in exercise of any right or obligation arising from the contract of employment. He was directed by the Carrier to make the change. The Carrier had a right, under Rule 21 (e) to require such a change. See Award 12818. But, this right does not serve to add an additional exception to Rule 9.

A change of assignments directed by the Carrier is not the equivalent of "moving from one assignment to another" within the meaning of Rule 9.

Therefore, since the exception relied upon by the Carrier did not apply, the overtime rate was proper for the two days in question. The claim will be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 31st day of July 1964.