

Award No. 13043
Docket No. TE-11800

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GREAT NORTHERN RAILWAY COMPANY

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

1. Carrier violated agreement between the parties hereto when it failed and refused to properly compensate H. G. Stickel for services rendered 10:00 A.M. to 6:00 P.M. on January 6, 1959, a rest day.

2. Carrier shall be required to compensate H. G. Stickel in the sum of \$23.04 in addition to amounts already paid for services rendered on January 6, 1959.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the parties hereto on the first day of September, 1949. The agreement has been amended. The agreement as amended is by reference made a part of this submission as though set out herein word for word.

The Carrier, Great Northern Railway Company, will hereinafter be referred to as Carrier or Management. The Order of Railroad Telegraphers will hereinafter be referred to as Employees or Telegraphers.

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. Under the provisions of the Railway Labor Act as amended, this Division has jurisdiction of the parties and the subject matter.

1. Claimant H. G. Stickel is an employe of Carrier holding regular assignment, classified as wire chief in Spokane Relay Office.

2. The position on which claimant has regular assignment is a 7-day position having assigned hours of service 4:00 P.M. to 12:00 Midnight.

3. Claimant is assigned to work Thursday, Friday, Saturday, Sunday, and Monday, and the assigned rest days are Tuesday and Wednesday.

damages, rests upon the party claiming the violation. That principle is recognized in the following awards of this Board:

Award No. 7362, ORC&B v. Pullman Co., Referee Larkin:

"The burden of establishing facts sufficient to require the allowance of a claim (and proper language in the agreement covering the situations), is upon those who seek the allowances."

Award No. 6359, ORT v. StLSW, Referee McMahon:

" * * * we must hold that the burden of proof is on the one who asserts the claim. Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegations as made."

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. There is no evidence whatsoever in the Forty-Hour Week negotiations and the proceedings which produced the August 4, 1950 Agreement, that indicates an intention of the parties to impose the type of absurd and unconscionable penalty upon the Carrier for working an employe on his rest days, which the organization seeks to impose in this case.
2. The organization's interpretation of the August 4, 1950 Agreement attempts to ignore Article V which specifically applies to the fact situation in the instant case, in favor of manipulating the more general provisions of the Agreement which apply to other fact situations so as to maximize the penalty.
3. Even if the language of the August 4, 1950 Agreement were inconsistent, uncertain, ambiguous or susceptible of two interpretations, the organization's interpretation in applying the facts of the instant case to the general provisions of the Agreement would leave no fact situation to be covered by Article V, thereby nullifying that Article and leaving it meaningless.
4. Awards Nos. 48 and 49 of Special Board of Adjustment No. 117, which involved rules and factual situations which are in all essential respects on all fours with the rules and factual situation involved in the instant case, specifically rejected the identical argument which the organization is making in the instant case, and deny substantially identical claims.
5. The organization has failed to carry its burden of proving a violation of the rules in this case.

For the foregoing reasons, the Carrier respectfully requests that the claims of the Employes be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, H. G. Stickel, on relevant dates, held regular assignment as Wire Chief in Spokane Relay Office. Assigned hours of the position were 4:00 P. M. to 12 Midnight, seven days per week. The assigned work days of the Claimant were Thursday through Monday. On Tuesday and Wednesday, the position was filled by regular rest day relief employe.

On January 6, 1959 (Tuesday) an assigned rest day of Claimant, he was called to work on the 10:00 A.M. to 6:00 P.M. shift in Spokane Relay Office. He worked the eight hour shift and claimed pay for six hours at time and one-half rate for services outside his regular week day assigned hours (10:00 A.M. to 4:00 P.M.) and eight hours at time and one-half rate for services within the hours of his regular week day assignment (4:00 P.M. to 6:00 P.M.). The Carrier disagreed and allowed eight hours at time and one-half rate.

The question, therefore, is the proper computation of wage allowances for service on this date. The parties have thoroughly briefed their respective contentions on the basis of Service on Rest Day Rule. The Board has thoroughly reviewed the rules and the contentions of the parties and is of the opinion that decision in this case is controlled by Award 9485 (Rose). The Board there said:

"The literal language of sub-paragraphs II, A (1) and IV, quoted above, cannot be ignored and is clearly applicable to the factual situation presented. Claimant was an employee 'required to perform service on' one of her 'rest days', Thursday, June 30, 1955. She was required to perform such service for one hour, 3:00 P.M. to 4:00 P.M., 'within the hours of' her 'regular week day assignment' of hours from 8:00 A.M. to 4:00 P.M. For such service, she was qualified for payment on the basis provided in sub-paragraph A (1), namely, 'at the rate of time and one-half with a minimum of eight hours', because she was one of the 'Employees occupying positions requiring a Sunday assignment of the regular week day hours'. The hours Claimant worked from 4:00 P.M. to 11:00 P.M. were plainly 'Time worked . . . after the hours of' her 'regular week day assignment' and considered overtime to be paid at the time and one-half rate in accordance with the provisions for payment of overtime in Paragraph 6 of Article II."

The Agreement rules there involved are the same as the rules involved in this dispute and we find no basis for distinction on the facts. 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 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

The Agreement was violated in failing to compensate Claimant as required by the rules.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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