

Award No. 13113
Docket No. TE-11055

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

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

1. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Charles H. Myers, Telegraph-Clerk, Fort Ticonderoga, New York, at time and one-half rate for services performed on December 23, 1957.

2. Carrier shall be required to compensate Charles H. Myers for the difference between straight time rate paid and time and one-half rate due for services performed on December 23, 1957.

3. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Gilbert Bonner, Telegrapher-Clerk, Port Henry, New York, at time and one-half rate for services performed on December 22, 1957.

4. Carrier shall be required to compensate Gilbert Bonner for the difference between straight time rate paid and the time and one-half rate due for services performed on December 22, 1957.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective April 1, 1957 and is, 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.

CASE NO. 1
(Charles H. Myers)

1. Claimant Charles H. Myers at all times relevant hereto was the owner

entitled to pay under Article 25 account being ready for service and not used on their assigned work days. Moreover, if either of these claimants had been required to work on the rest days of their new assignments, or on the 6th or 7th day of their new work weeks, they would certainly contend for payment at the time and one-half rate therefor.

When notice is served under Article 33, Section 3-C, to change the rest days, it is the carrier's obligation to make the change effective as of a certain date. When this is done, the old work weeks or assignments and rest days are no longer in existence, and there is no authority whatever in the agreement for the contention that the employees affected should continue to be worked or paid on the basis of their former assignments. The effect of the application of the rules therefore is that the former assignments are terminated on the effective date of the change and thereafter the employees will observe their new assignments and will be paid under the provisions of the applicable rules on the basis of their new assignments.

As further evidence that claimants were not in any way adversely affected by reason of the change in their rest days, the carrier points out that in the 7-day period just prior to the change they each worked 5 assigned days with 2 rest days, and in the 7-day period beginning with the change they also worked 5 assigned days with 2 rest days, which is the same number of days they would have made during this period had their assignments remained unchanged.

It would be absurd to have a rule (Article 33, Section 3-C) authorizing the change in rest days in such situations if it could not be applied by the carrier without incurring the penalty which the employees are here seeking. Such a condition was not the intention of the parties, and it is not the purpose and intent of the rule. It is one of the elementary rules of contracts that construction and interpretation of a written instrument is determined by examining all of it to see that one portion does not contradict another. Thus it is the carrier's position that it could properly have either changed the rest days by giving the required 72 hours notice or abolished the jobs and readvertised them with new rest days, and that neither method would have entailed a penalty under the provisions of the applicable agreement.

The carrier's position in this case is supported by Third Division awards 5854, 5998, 6211, 6281 and 6282.

In conclusion, the carrier has shown that the entire service performed by claimants was on their assigned work days; that they were not worked more than 5 days in their work weeks, or on their assigned rest days or the sixth or seventh days of their work weeks; that they were properly compensated for the service performed at straight time rate of pay in accordance with Articles 14 D and E, 25, and 33 (Sec. 1-I and Sec. 3-C) of the applicable agreement. Claim for payment at the time and one-half rate for work performed on the days involved is not supported by any rule or provision in the agreement in effect between the parties.

Carrier respectfully requests that claim be denied.

OPINION OF BOARD: The sole question presented to this Board is whether the Carrier violated the Agreement when it failed to compensate Claimant Charles H. Myers at the time and one-half rate of \$26.55 for services rendered on December 23, 1957 rather than the straight time rate of \$17.70 and when it failed to compensate Claimant Gilbert Bonner at the time and one-half rate of \$26.40 for services rendered on December 22, 1957 rather than the straight time rate of \$17.60.

The parties are in Agreement that the Carrier acting pursuant to and in accordance with the requisites of Article 33, Section 3 C: 1. Service requirements and 2. Seventy-two (72) hours' written notice to the employes affected and through its Inter-Office Memorandum of December 13, 1957 as follows:

"On Thursday, December 19 and thereafter the hours of service of the second trick Teleg-Clerk Fort Ticonderoga, will be 8:00 P. M. to 4:00 A. M. rest days Tuesday and Wednesday" (Emphasis ours.)

which changed Claimant Myer's rest days from Monday-Tuesday to Tuesday-Wednesday giving him initial rest days of December 24th and 25th, 1957 and a sixth working day of Monday, December 23rd, 1957 and,

"Effective Thursday, December 19 and thereafter the rest days of second trick telegrapher-clerk Port Henry will be Monday and Tuesday." (Emphasis ours.)

which changed Claimant Bonner's rest days from Sunday-Monday to Monday-Tuesday giving him initial rest days of December 23rd and 24th, 1957 and a sixth working day of Sunday, December 22nd, 1957, changed said claimants rest days.

Carrier recognized the sixth day worked by Claimants Myers and Bonners and paid for the same at the straight time rate urging the "change of rest days" constituted new assignments. The facts do not bear this out: Claimants are the same, they are still on their same respective assignments as second trick telegrapher clerks at Fort Ticonderoga and Port Henry respectively and the Inter-Office Memorandum of Carrier properly denotes the change as "rest days."

"There was no transfer of position involved and we do not agree that Claimants were moving from one assignment to another within the meaning of Article No. 33, Section 1-I." Conform Award 9962 (Weston)

Claimants herein are entitled to be paid at the rate of time and one-half in accordance with Article 14 D & E. Conform Award No. 9962 (Weston) and others.

Carrier urges in its reply to Employes' ex parte submission that there has not been proper handling on the property. A careful review of the records fails to disclose what more could be done.

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 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 has been violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1964.