Award No. 13299

Docket No. TE-12238

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Lines (Reading Company), that:

1. Carrier violated the agreement between the parties when it declined to pay Mr. Frank Johnson, a telegrapher-clerk at Ambler, the time and one-half rate for service performed on Monday, July 20, 1959, a regularly assigned rest day of the assignment.

2. Carrier shall now pay to Mr. Frank Johnson the sum of $9.74, being the difference between time and one-half rate due at $2.434 per hour of $29.21 and straight time rate allowed and amounting to $19.47.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collective bargaining agreement entered into by and between Reading Company, Philadelphia, Reading and Pottsville Telegraph Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreement was effective September 1, 1946, as corrected September 1, 1951. The agreement 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.

1. At all times relevant hereto, Claimant Frank Johnson owned position classified as telegrapher-clerk at Ambler with assigned hours of service 1:10 P. M. to 9:10 P. M.

2. The hourly rate of pay at times involved was $2.434 per hour.

3. At all times involved herein and prior to the date of claim, Claimant was assigned to work Tuesday through Saturday with assigned rest days of Sunday and Monday.

after the effective date of the notice served under Article 12, Section 1, (1). Prior thereto, Monday was a part of the relief worker's regular relief assignment but as of July 20, 1959, Monday became an assigned work day of the claimant. Therefore, it is apparent that had the Carrier used the relief employe on Monday, July 20, 1959, claimant would have been entitled to pay under Article 5 account being ready for service and not used on his assigned work day. Moreover, had claimant been required to work on the rest days of new assignment, or on the sixth or seventh day of his new work week, he would have certainly claimed and been paid time and one-half rate therefor.

Carrier desires to point out that when notice is served under Article 12, Section 1, (1), to change the rest days it is obliged to make the change effective as of a certain date. When this is done, the old work week or assignment and rest days are no longer in existence and Carrier maintains there is no authority whatever in the agreement for the contention that employe 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 former assignments are terminated on the date of the change and thereafter the employe observes his new assignment and is paid under the provisions of the schedule agreement on the basis of his new assignment.

Carrier submits that it would be absurd to have a rule authorizing a change in rest days if it could not be applied by the Carrier without incurring the penalty the Organization is 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. It is the Carrier's position that it could properly have either changed the rest days of claimant by giving the required 72 hours notice or abolished the job and readvertised same with new rest days and that neither method would have entailed a penalty under the provisions of the applicable agreement.

Under all the facts and circumstances, Carrier maintains that the service performed by claimant on July 20, 1959 was on an assigned work day; that he was not worked more than five days in his work week, or on his assigned rest day or the seventh day of his work week; that he was properly compensated for service performed at straight time rate of pay in accordance with applicable provisions of the schedule agreement. Carrier submits that the claim for payment at the time and one-half rate for work performed on July 20, 1959 is not supported by any rule or provision in the agreement in effect between the parties. Carrier respectfully requests that the Board so find and that the claim be denied in its entirety.

OPINION OF BOARD: The Claimant was the regular incumbent of a position of telegrapher-clerk with assigned work days Tuesday through Saturday with rest days of Sunday and Monday. During the week beginning Tuesday, July 14, 1959, he worked his regular assignment up to and including Saturday July 18, 1959. On July 17, 1959, he was properly advised of a change in his rest days and consequently his work week, to be effective Monday, July 20, 1959. Beginning on that day, his work week was to be from Monday to Friday inclusive with rest days of Saturday and Sunday. Claimant has filed for time and a half for work performed on Monday, July 20, 1959, contending that this was a rest day attaching to his former schedule. Carrier has paid him for services rendered on that day, but only at the pro rata rate.

Article 7 (a) of the Agreement provides:

Overtime

"Work in excess of forty straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Article 12.

"Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Article 12."

It is clear from the factual situation that none of the exceptions contained in this rule are applicable to this case. The Claimant was not moving from one assignment to another; neither was he moving to or from an extra or furloughed list; nor were days off being accumulated under Paragraph (g) of Section 1 of Article 12.

The exceptions contained in this standard 40 hour work week rule are clear and explicit. To sustain the Carrier's argument in this case would require us to read into the language of the contract a meaning not explicitly or implicitly stated. It would have been a relatively simply matter for the contracting parties to have made the exception that rest days may be changed without overtime compensation, but such was not the case. We adopt the reasoning and language of Award 9962 (Weston) inter alia and will sustain the claim.

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 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 12th day of February 1965.