

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE COLORADO AND SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the terms of the Telegraphers' Agreement when and because, on October 2, 1961, it failed to properly assign B. Benedetti, who was entitled to the work performed at Loveland, Colorado, available therefor but not called.

2. Carrier shall now compensate B. Benedetti for a call on his rest day, equal to three (3) hours, at the time and one-half rate of his position.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties hereto was updated and reprinted in booklet form and said booklet includes all revisions up to January 1, 1955. Copy of said Agreement is on file with your Board, as are amendments thereto adopted subsequent to the date of January 1, 1955. This Agreement, as amended, is, by reference, considered in evidence in this dispute.

At page 38 of the Agreement, the three positions at Loveland, Colorado, are listed; one on each of the three tricks. Mr. B. Benedetti, claimant, is the occupant of the first trick position at Loveland, Colorado. The work week of his position is Monday thru Friday, with daily assigned hours of 8 A. M. to 4 P. M. His rest days are Saturday and Sunday. Relief Position No. 4, held by Mr. M. Sheard, was scheduled to protect Mr. Benedetti's assignment on Saturdays. The position does not work on Sundays and is in the category of a 6-day position.

On Sundays the second trick position works from 4:30 P. M. thru 12:30 A. M. Mr. Sheard's Relief Position No. 4 works the 4:30 P. M. to 12:30 A. M. second trick position on Sundays.

On Sunday, October 2, 1960, carrier required service to be performed between 3:30 P. M. and 4:30 P. M., the commencement of which is within

regular relief Telegrapher Sheard one hour early and pay him three hours pro rata pay.

- C. The National Forty-Hour Week Agreement of March 19, 1949, expressly provided that there would be no change in the call rules as a result of the shorter work week.
- D. The use of a man who is regularly scheduled to work on Sunday one hour in advance of his starting time is much more logical than calling out a man on his rest day. The Agreement must be interpreted in a manner which will produce a reasonable result, not an unreasonable one.

For these reasons, the claim must be denied.

OPINION OF BOARD: The instant case involves an incident which occurred at Loveland, Colorado on Sunday, October 2, 1960, an intermediate station between Denver, Colorado and Cheyenne, Wyoming and is regularly assigned to Telegrapher Operators on twenty (20) eight hour tricks each week. The only trick not assigned is the first trick of 8:00 A. M. to 4:00 P. M. on Sunday, as the Loveland station is closed between the hours of 7:30 A. M. and 4:30 P. M. on Sundays.

The Claimant, B. Benedetti is the incumbent employe of the first trick position at Loveland, Colorado. The work week of his position is Monday through Friday, with daily assigned hours of 8:00 A. M. to 4:00 P. M. His rest days are Saturday and Sunday.

On Sunday, October 2, 1960, a special passenger train was operated Denver to Loveland and return. The train arrived Loveland at 11:20 A. M. and departed to Denver on a return trip at 4:45 P. M. No extra Telegraphers were available to handle the return movement. Claimant, the incumbent was available to cover this assignment on Sunday, October 2, 1960, but instead, the regularly assigned relief Telegrapher, whose assigned hours were 4:30 P. M. to 12:30 A. M. that day, was called by the Carrier to go on duty one hour early, or at 3:30 P. M.

Claimant filed a time report on Sunday, October 2, 1960 with the Chief Dispatcher for a call of two (2) hours at time and one-half rate; Claiming he should have been assigned. The Chief Dispatcher denied the Claim. The Organization rejected the denial of the Chief Dispatcher and on the same day of October 20, 1960, amended the amount claimed by the incumbent in his time report from two (2) hours at time and one-half rate to three (3) hours at time and one-half rate. This amended rate and letter of appeal was directed to the Superintendent, who in turn, denied the claim. Though this amended amount claimed by the regular employe was in issue on the property, under the Time Limit Rule, the Carrier has not raised this issue before the Board.

The Organization alleges a failure of the Carrier to comply with the Agreement under Rule 11 (m) which reads:

“(m) Work On Unassigned Days — Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.”

and also under Rule 11, Section 1, (1), II, B, (1):

“... at the rate of time and one-half with a minimum of three hours for each tour of duty on Sunday.”

The Carrier maintains that it had no obligation to assign the Claimant on the time and date in question and claims that it had a right to select and call the regularly assigned relief Telegrapher to report to work one hour early in advance of and continuous with his regular work period, in strict accordance with Rule 9, which reads:

“Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis. An employee notified or called to perform work in advance of and continuous with the regular work period shall be paid three (3) hours at the straight time rate for two (2) hours' work or less, and at the overtime rate thereafter on the minute basis, for the time required to work in advance of the regular starting time.”

The Carrier relies primarily on the second sentence of Rule 9, in the instant case for calling the regular relief Telegrapher.

The Board believes that the issue was properly presented by the petitioner on behalf of the Claimant and holds that the Carrier violated the terms of the Telegraphers' Agreement Rule 11 (m) as the Carrier had a contractual obligation to assign the Claimant to the special service required by the Carrier on Sunday, at 3:30 P. M. on October 2, 1960.

The Board in this case, as in all cases, follows the rules of contract construction, to only interpret the written Contract as agreed upon between the parties, both being bound by the provisions of the Agreement. In no manner is the Board to rewrite or change the construction thereof.

Rule 11 (m) therefore, is unambiguous by its terms in designating **who** will “Work On Unassigned Days.” On October 2, 1960, there were no extra Telegraphers available or any unassigned employees who will have otherwise not have forty hours of work that week. The regular employee was available. The Rule is clear who should be called to perform work required by the Carrier — “in all other cases by the regular employee.”

Award 10575, (LaBelle) held and properly so, “it is obvious that by its wording, it gives the Carrier an option, if it so desires, to call an available extra or unassigned employee who would not otherwise have forty hours of work that week: the rule then states “in all other cases by the regular employee.” Also, “The option or choice given to the Carrier involves only the extra employee and not the regular employee. Failure to exercise the option as to the extra employee means that the regular employee is entitled to the work.”

Award 10713, (Wilson) interprets the “Work On Unassigned Days” Rule, rules specifically give an option to the Carrier to use the regular incumbent of a position on unassigned days. Also, “where a provision of an Agreement is specific in Content it will prevail over rules general in Nature.”

Both these Awards support the Boards interpretation that Rule 11 (m) applies in the present issues as to designating the employee the Carrier must

call. Either the extra employe or the unassigned employe who would not have forty hours of work that week, and in all other cases by the regular employe.

Rule 9 — "Calls" relied upon by the Carrier is interpreted by the Board as being primarily a Payment Provision rule and we cannot take out of or isolate from Rule 9, the second sentence to fit the contentions of the Carrier that he had the prerogative under this Rule to select or call the regularly assigned relief Telegrapher one hour early on October 2, 1960. We do not wish to imply that the Carrier has no right to call out a Telegrapher ahead of his regular trick under Rule 9. He certainly does, but Rule 11 (m) controls who will be called in the case before us, not Rule 9. Rule 11 (m) only gives the Carrier options to select the extra employe or unassigned employe who will not otherwise have forty hours of work that week; in all other cases the regular employe.

Emphasis is placed by the Carrier, that the work required from 3:30 P. M. to 4:30 P. M., on Sunday, October 2, 1960, was not on "a day which is not part of any assignment," since there were two shifts of Telegraphers assigned to work on that day. We disagree. Rule 11 (m) as written, "on a day which is not part of any assignment," relates to the Sunday assignment of the regular employe being 8:00 A. M. to 4:00 P. M., Monday through Friday, with rest days Saturday and Sunday, therefore, the Carriers call was on "a day which is not a part of any assignment."

The Claim will be sustained and the Claimant entitled to payment under Rule 11, Section 1, (1), II, B, (1) "at the rate of time and one-half with a minimum of three (3) hours for each tour of duty on Sunday."

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 28th day of May 1965.