

Award No. 13935
Docket No. TE-13707

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: *Claim of the System General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Lines, that:*

(a) The terms of the agreement between the parties hereto were violated when at 6:55 P. M. and while on his own free time on the evening of Wednesday, July 5, 1961, Carrier advised Telegrapher W. C. Heard, the regular assigned occupant of third shift position at Mt. Pleasant, Texas, with hours 11:55 P. M. to 7:55 A. M., rest days, Wednesday and Thursday, that claimant would not now be required to work his second rest day beginning at 11:55 P. M., July 6, 1961.

(b) The terms of the agreement between the parties hereto were violated when at 4:55 P. M. and while on his own free time on the evening of Wednesday, June 21, 1961, Carrier advised Telegrapher W. C. Heard, the regular assigned occupant of third shift position at Mt. Pleasant, Texas, with hours of 11:55 P. M. to 7:55 A. M., rest days, Wednesday and Thursday, that claimant would not now be required to work his second rest day beginning at 11:55 P. M., June 22, 1961.

(c) Carrier shall now be required to compensate Telegrapher W. C. Heard for 9 hours on June 21, 1961 at the time and one-half rate of pay and for 11 hours on July 5, 1961 at the time and one-half rate of pay, such compensation being for service performed while on stand-by service for the Carrier.

EMPLOYEES' STATEMENT OF FACTS: There is in effect between the parties to this dispute a collectively bargained agreement bearing date of December 1, 1934, some rules of which have been revised, rates of pay have been increased, and the Agreement has, in some respects, been amended by nationally negotiated agreements. The Agreement and all revisions and amendments thereto should be on file with this Division of the National Railroad Adjustment Board and, by reference, are made a part of this submission, just as though copied herein word for word.

assigned employee. It provides that the least desirable solution of the problem would be to work some regular employees on the sixth or seventh days at overtime rates and thus withhold employment from additional relief men. This Board has consistently held that work on rest days should be assigned in the first instance to the regularly assigned relief man if there be such; secondly, to an extra or unassigned employee, and, finally, if such employees are not available, to the regular occupant of the position on an overtime basis. Consequently, the regularly assigned employee has no right to employment on his relief day when either the relief man becomes available or an extra man becomes available. Accordingly, with those men available he has nothing to be displaced from on his relief day. It is reasonably conceivable that if the Carrier failed to assign the available relief or extra employee, that it would then be faced with a claim on behalf of either of them. We conclude that Article 11, paragraphs (a) and (b) are inapplicable.

No other rule of the Agreement has been cited to us nor do we find any which would govern in this situation. It is true that at least one of the Claimants (Kroft) was considerably inconvenienced in holding himself ready for work until about 10 minutes before assigned starting time when he was notified at home by telephone not to report. There is no rule in the Agreement which affords pay for this type of inconvenience. The remedy is to negotiate a rule to cover the situation. (See Award 5916)."

III.

In conclusion, Carrier respectfully submits that the claim should be denied, as it is not supported by the agreed rules.

Without prejudice to its position that the claim should be denied for lack of support of the agreed rules, Carrier also submits that even if the claim had merit (which Carrier denies), in no event could the claim for time and one-half rate be valid for time not actually worked, as shown by numerous Third Division NRAB awards which have so held.

(Exhibits not reproduced.)

OPINION OF BOARD: The second of Claimant's two weekly rest days, Wednesday and Thursday, is not included in a regular rest relief assignment, but is filled by an extra employee when one is available, otherwise by the regular incumbent, Claimant W. C. Heard.

Heard was under standing instructions to work this second rest day "unless otherwise instructed." After completing his fifth day of service at 7:55 A. M., Wednesday, June 21, 1961, and again on July 5, 1961, Claimant Heard went off duty expecting to work the respective following rest days of Thursday, June 22, and July 6. However, the Carrier notified him at 4:55 P. M. on June 21, and at 6:55 P. M. on July 5, that he would not work the following rest day of Thursday. Thus, these notices were given nine and eleven hours, respectively, after the end of Claimant's regular tour of duty.

Claim was filed for nine hours' pay on June 21 and for eleven hours' pay on July 5, both at the overtime rate provided by Article 6-3 for continuous service after regular working hours.

The petitioners' theory is that Claimant was on continuous stand-by duty during the nine and eleven hours, waiting to be "otherwise instructed", and that such "stand-by duty" constitutes "service" compensable under Article 6-3.

From an equitable standpoint, the Employees have built an appealing structure in support of their claim. But it has no foundation in the agreement. There is no rule cited which relates to "stand-by" service or pay. Claimant Heard was not performing stand-by service within the generally recognized meaning of that term. And, as a matter of fact, his period of two rest days had not begun when he received the notices involved.

As observed in Award 6802, if employees are to be spared the unquestionable inconveniences attending such occurrences, negotiation of appropriate rules is necessary. Such rules have not been negotiated here; therefore, the claim must be denied.

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 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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.