

Award No. 14392
Docket No. TE-14137

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that:

1. Carrier violated the terms of the parties' Agreement because on December 25, 1961, it held Mr. C. H. Snyder, regularly assigned first shift operator, East Lyme Drawbridge, East Lyme, Connecticut, off duty and failed to properly compensate him therefor.

2. Carrier shall now compensate Mr. Snyder the difference between the amount he was paid for the holiday, December 25, 1961, and that to which entitled, namely, eight hours at time and one-half rate. (Railroad Docket 9202.)

EMPLOYEES' STATEMENT OF FACTS: The following shows a listing of the existing drawbridge operator positions at East Lyme, Connecticut, the occupants thereof during the claim period involved, their assigned work hours and work weeks:

Occupant	Shift	Assigned Hours	Work Week	Rest Days
C. A. Snyder	First	7:00 A. M.- 3:00 P. M.	Mon-Fri	Sat-Sun
J. M. Minor	Second	3:00 P. M.-11:00 P. M.	Wed-Sun	Mon-Tues
G. G. Emerson	Third	3:00 P. M.- 7:00 A. M.	Thur-Mon	Tues-Wed

(Relief Position No. 6, held by L. E. Daniels, provides rest day relief service on the rest days shown — except on Thursday on the third shift, which is otherwise covered — with his rest days being Thursday and Friday.)

Mr. C. A. Snyder (claimant) worked his first shift position on Friday, December 22, 1961, completing the assignment of his work week. On Saturday, December 23, the occupant of the second shift position (Mr. Minor) reported off duty for an indefinite period due to illness. No extra employees

A copy of the Agreement is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this claim are not in dispute. Claimant owned a regular assignment, Monday through Friday from 7:00 A.M. to 3:00 P.M., at the Niantic River Drawbridge. On his rest days, Saturday, December 23, and Sunday, December 24, Claimant was required to work the second shift because the occupant of that position reported off due to illness. On Sunday, December 24, the relief operator of Claimant's first shift position was involved in an automobile accident. As a consequence, Claimant performed twelve hours' service on Sunday, December 24 (including a four hour split of the first shift relief position).

Because of the Hours of Service Law, Claimant was suspended from working Monday, December 25, a regular work day of Claimant's assignment. His position, it should be noted, was assigned to and worked by a relief man; it was not blanked.

Pursuant to the provisions of the August 21, 1954 National Agreement, Claimant was paid the one day's holiday pay.

Claimant, through the Organization, contends that he was also entitled to be paid an additional day's pay at the time and one-half rate on the theory that if he had worked on Christmas, his regular workday, such would have been his payment.

Carrier asserts that by reason of the emergency created requiring Claimant to work on December 24, he was unable to work on December 25 because of the Hours of Service Rule proscription; and in the absence of a rule supporting payment in such circumstances, Carrier should not be penalized for adhering to the Hours of Service Law.

Claimant contends that Carrier violated the terms of the Agreement because he received "less pay than he would have received had he not been used in such emergency service."

The question to be decided, therefore, is whether Claimant, who was prevented from working his own assignment because of an emergency, is entitled to receive the pay he would have received had he been allowed to work his own assignment.

The relevant rules of the Agreement are set forth:

"ARTICLE 29.

RELIEF SERVICE BY REGULAR EMPLOYEES

Regularly assigned employees will not be required to work at other than their regular positions, except in cases of emergency. When required to work temporarily at other than their regular positions, employees shall be paid at the higher rate of the two positions and in addition shall be allowed any actual necessary expenses incurred and straight time rate for time consumed in traveling and waiting enroute to and from such temporary assign-

ment. In no event will the employe receive less pay than he would have received had he not been used in such emergency service."

"ARTICLE 4.

ESTABLISHMENT OF SHORTER WORK WEEK

SECTION B - HOLIDAYS - PAY FOR

Time worked within the hours of the regular weekday assignment on the following holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays falls on Sunday, the day observed by the State, Nation, or by proclamation, shall be considered the holiday), shall be paid on the following bases:

On Seven-Day Positions:

At the rate of time and one-half with a minimum of eight (8) hours. . . ."

"AGREEMENT BETWEEN THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND EMPLOYEES OF THE AFORESAID COMPANY REPRESENTED BY THE ORDER OF RAILROAD TELEGRAPHERS.

IT IS AGREED THAT:

Except as provided for in Article 29 of the current Agreement dated September 1, 1949, short vacancies will be filled as follows in the order shown:

- (a) A qualified extra employe who otherwise would not have forty (40) hours in his work week.
- (b) The regularly assigned available employe of that position on his rest day.
- (c) The senior qualified available employe at the point (Tower, Station or Drawbridge) of the vacancy, on his rest day.
- (d) By the senior qualified available employe assigned at the nearest point (Tower, Station or Drawbridge) to the point of vacancy, on his rest day.

An employe will not be considered available if the filling of a position in accordance with this understanding interferes with his availability under the Hours of Service Law for the duties of his regular assignment, or he cannot cover the assignment at the regular assigned starting time.

This agreement shall become effective on November 15, 1960, and remain in effect thereafter until changed or modified in ac-

cordance with the provisions of the Railway Labor Act, as amended, and as provided in Article 35 of the Master Agreement.

Signed at New Haven, Connecticut, this 8th day of November, 1960.

For The New York, New Haven
and Hartford Railroad Company

For The Order of Railroad
Telegraphers

/s/ J. J. Gaherin
Vice President, Labor
Relations and Personnel"

/s/ John J. Marr
General Chairman

"ARTICLE 3. GUARANTEE

Regular assigned employees shall receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight (8) hours as per location, except on assigned rest days on positions which it is necessary to be regularly represented for eight hours a day, seven days a week, or on rest days and holidays on other positions.

This rule shall not apply in cases of reduction in forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

We find that under the Agreement and preceding awards of this Board, Claimant was entitled to receive what he would have earned on the first day of his regular assignment (December 25) but for the existence of the emergency. This is so, notwithstanding the Hours of Service Law. Awards 6781, 10445 and 13363.

In Award 10445 (Rose), this Board stated:

"In the exercise of its management prerogative, the Carrier chose to meet the emergency by assigning the Claimant to fill the position. Such action of the Carrier was the proximate cause of the disqualification of the Claimant, by reason of the Hours of Service Law, from working his regular assignment on the next day which was his first regular work day of his succeeding work week. We are not referred to any provisions of the Hours of Service Law which bars the Claimant from recovering pay for that day if the rules of the Agreement provide for payment under the confronting circumstances. See Awards 2827, 3488, 3631."

Article 29 of the Agreement provides, in effect, that employees who are used in emergency situations will not be deprived of pay that they otherwise would have received had the emergency not existed.

The emergency created during Claimant's previous workweek (ending Sunday, December 24), resulted in Claimant being deprived of earning as much during the succeeding workweek (commencing Monday, December 25) as he would have in normal circumstances. In this connection, the Board in Award 6781 (Donaldson) said:

"It was a consequence of the relief duties performed at the Carrier's request and benefit that Claimant ran afoul of the Hours of Service Law. The result was the loss of one day's work in his succeeding work week, and as we construe the Rule in this case, the day should be compensated for."

Carrier emphasizes the fact that Article 4, Section B (quoted above) is inapplicable because it specifically provides the time and one-half rate only for time "worked" within the regular weekday assignment, and since Claimant did not work, he is not entitled to the rate.

All of the awards cited by Carrier (Awards 13277, 8539, 13259, 10594) in support of this contention involved blanked holidays, and are distinguishable on that basis. In the instant claim, the holiday was not blanked; it was assigned to and worked by a relief man.

When Article 4 is considered together with Article 3, the Guarantee Rule (quoted above), it is clear that under these circumstances it was unnecessary for Claimant to have actually worked before he was entitled to the compensation claimed. Award 8859.

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 violated.

AWARD

The Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 5th day of May 1966.