

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
— EASTERN LINES —**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when it refused or failed to allow E. H. Zeiner to advance to a temporary vacancy on the 9:00 A. M. to 5:00 P. M. printer clerk position, Topeka, Kansas, beginning July 8, 1961, and further violated the Agreement when it failed or refused to pay S. M. Wilkins for eight hours at the time and one-half rate for service performed at Topeka, Kansas, on July 8 and 9, 1961.

2. Carrier shall now be required to compensate E. H. Zeiner for eight hours' pay at the rate of the 9:00 A. M. to 5:00 P. M. printer clerk position at Topeka each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the 9:00 A. M. to 5:00 P. M. printer clerk position at Topeka, beginning July 8, 1961.

3. Carrier shall also compensate S. M. Wilkins for the difference between eight hours at the pro rata rate and eight hours at the time and one-half rate for service performed at Topeka, Kansas, on July 8 and 9, 1961.

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties bearing effective date of June 1, 1951, is in evidence.

Printer Clerk C. K. Oroke, regular occupant 7:30 A. M. to 3:30 P. M. position, Topeka, Kansas, Relay Office, was granted a vacation beginning Monday, June 19, 1961. He was entitled to fifteen days' vacation with pay. Extra employe S. M. Wilkins was assigned to fill the temporary vacancy.

Mrs. S. M. Wilkins filled the position from Monday, June 19 to July 7, 1961, inclusive, earning rest days of June 24, 25, July 1, 2, 8 and 9, 1961.

The Carrier did not permit Mrs. Wilkins to observe the last two rest days, July 8 and 9, 1961, attached to Oroke's assignment and required her to perform work on the 9:00 A. M. to 5:00 P. M. printer clerk position beginning July 8, 1961. She filled this position from July 8 to 19, 1961.

"September 28, 1961
135-155-37

Mr. D. A. Bobo, General Chairman,
The Order of Railroad Telegraphers,
208 Columbian Bldg.,
Topeka, Kansas.

Dear Sir:

Referring further to your appeal claim of August 21, 1961, file 73A61-219, in behalf of (1) Extra Telegrapher Mrs. S. M. Wilkins on July 8 and 9, 1961, and (2) Mr. E. H. Zeiner in the Topeka Relay Office commencing July 8, 1961:

Without reviewing the facts, other than to state that Mrs. Wilkins did not perform compensated service on Tuesday, July 4, 1961, and only worked 32 hours during that work week, it will suffice to say that your appeal claim is wholly without support under the rules of the current Telegraphers' Agreement and is accordingly declined for that and the following additional reasons:

First: Since Mrs. Wilkins had not worked 40 straight time hours in a work week when released from the 7:30 A.M. to 3:30 P.M. assignment she had been protecting at the close of work on July 7, she was available for another vacancy under Article XXI, Section 15 of the Telegraphers' Agreement and was therefore properly used to fill the temporary vacancy commencing 9:00 A.M. July 8, 1961 under the terms of Article XXI, Section 10-d of the Telegraphers' Agreement.

"Second: Since it is not compensation for time worked the 8 hours' holiday pay that is granted employees under Article III—Holidays of the August 19, 1960 Agreement cannot be considered hours worked in determining if extra employees have '* * * worked forty straight time hours in a work week' as that phrase appears in Article XXI, Section 15 of the Telegraphers' Agreement.

Your appeal claim is, moreover, not supported by Award No. 76 of Special Board of Adjustment No. 132 for the reason that, in addition to being based on an agreement rule that does not appear in the current Telegraphers' Agreement, the circumstances surrounding the claim in Award No. 76 are readily distinguishable from those surrounding your appeal claim which incidentally, involves a rule, i.e., Article XXI, Section 15, that was obviously not a part of the agreement in effect between the parties to the dispute in Award No. 76.

Yours truly,

/s/ L. D. Comer"

OPINION OF BOARD: The facts involved in this dispute are briefly as follows:

Printer Clerk Oroke, regular occupant of position in Relay Office, 7:30 A.M. to 3:30 P.M., was granted a fifteen days' vacation commencing Monday,

June 19, 1961. Hence, extra employe Wilkins was assigned to fill the temporary vacancy.

Mrs. Wilkins filled the position from Monday, June 19 to July 7, 1961, inclusive, earning rest days of June 24, 25, July 1 and 2. One of the primary issues to be determined in this dispute concerns the question whether Mrs. Wilkins also earned rest days of July 8 and 9, 1961.

The Carrier alleged that Mrs. Wilkins, one of the Claimants herein, completed service on Oroke's position at 3:30 P. M., July 7, 1961, and was returned to the extra list.

Thereafter, Printer Clerk Kinder, 9:00 A. M. to 5:00 P. M. assignment, Saturday through Wednesday, rest days Thursday and Friday, was granted a vacation from July 1 to July 19, 1961, inclusive. This position was blanked during the period July 1 to 7, inclusive, due to the unavailability of Printer Clerks. However, on Saturday, July 8, 1961, at 9:00 A. M., extra Printer Clerk Wilkins was placed on this position and remained thereon through July 19, 1961. Claimant Wilkins was paid the pro rata rate for the work performed on July 8 and 9, 1961.

The Organization, thereupon, precessed this claim on behalf of Claimant Wilkins for the difference between the pro rata rate and the overtime rate for the work performed on July 8 and 9, 1961, on the premise that she was entitled to the rest days of July 8 and 9, 1961.

In addition, a second claim was instituted on behalf of Printer Clerk Zeiner, desiring to move up, regular assignment 11:30 P. M. to 7:30 A. M., for 8 hours at pro rata rate for each day held off the 9:00 A. M. to 5:00 P. M. position, and also at the overtime rate for each hour worked outside the assigned hours beginning July 8, 1961.

In short, the question involved herein is whether Claimant Wilkins was entitled to the rest days of July 8 and 9. The Organization contends that when this Claimant assumed the workweek of Printer Clerk Oroke's position in *affording vacation relief Monday through Friday, she also assumed the rest days of Oroke's position.*

The Carrier, on the other hand, argues that the workweek commencing Monday, July 3rd contained a holiday—July 4—and, therefore, the Claimant actually worked only 4 days, i.e., 32 hours in that week. Therefore, since the vacancy on Oroke's position terminated at 3:30 P. M., Friday, July 7, the Claimant was available and used properly to fill Kinder's vacancy commencing at 9:00 A. M., on July 8, at the straight-time rate.

The following quoted Rules of the effective Agreement are pertinent herein:

“ARTICLE III, Section 10-b

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving. If relief positions include relief service on two positions on one day, the straight time rate of each position shall be paid, but this does not contemplate working a relief employe through two consecutive

shifts. Work on rest days not covered by regular relief assignments may be performed by qualified extra men if available, who will be paid pro rata rates therefore, and whose days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days off of that assignment."

"ARTICLE XXI, Section 15.

"Wherever in this Article XXI provision is made for the use of extra employes, it is understood that, except in case of emergency, an extra employe who has worked forty straight time hours in a work week shall not be available for another vacancy in the same work week. If an extra employe has worked less than forty straight time hours in a work week and then becomes available for a subsequent vacancy in the same work week, he shall be permitted to protect such subsequent vacancy, even though he will thereby work more than forty hours in that work week, and shall be paid only straight time therefor."

"ARTICLE XX, Section 8-a.

"When a temporary vacancy of thirty (30) days or less occurs in an office where more than one (1) shift is worked, the employes in that office will be notified thereof and, if qualified, will be permitted, if they so desire, to advance to preferred tricks therein, including the Agent's position (other than supervisory) at the location, according to their Division seniority; the trick left vacant to be filled from the extra list. A point where the position of Agent is listed in the wage scale and is located in a separate building or office from the telegraphers performing station work will, for the purposes of this Section 8-a be considered as one office. The Railway Company is not to be committed to any additional expense because of changes in shifts resulting from the application of this Section."

Two questions arise in connection with the claim of Mrs. Wilkins. First, by filling Oroke's position, the regular assigned occupant, was she entitled to the rest days of that assignment, and if she worked on those rest days should she have been paid the overtime rate? We believe this question requires an affirmative answer. It flows from Article III, Section 10-b of the effective Agreement, as well as our previous awards which have interpreted this question. In award 10391, quoting from Awards 6970 and 6971, we stated as follows:

"When an extra employe takes the assignment of a regular employe, he assumes the conditions of that assignment. He takes the work week of the occupant and the rest days incidental thereto . . . when he works 40 hours in the work week of the position assumed, he is entitled to the rest days thereof. If he works on his rest days, he is entitled to be paid for rest day work * * *"

Therefore, Claimant Wilkins having taken the assignment of Oroke, the regular employe, assumed all the conditions of that assignment, including rest days.

The next question is basic to this dispute, namely, whether Mrs. Wilkins' worked 40 hours in the workweek of the position assumed? The Carrier argues that she actually only worked four days—32 hours—in that week, as July 4

was a holiday and the position was blanked. However, although she did not perform any work on that day, she was paid for the holiday.

We believe that this precise point was answered by Referee Robertson in Special Board of Adjustment No. 132, Award No. 76, and we quote:

"* * * Thursday was a work day of the position under the rule but because Thursday, November 26, 1953 was a holiday the position was blanked. The blanking of the position on Thursday did not, however, alter its status as a work day. Inasmuch as claimant did not work any other assignment on that Thursday and worked the same assignment on Tuesday, Wednesday, Friday and Saturday, he should be considered as filling the Indiana assignment during the five consecutive work days of the assignment. Accordingly he should have been paid at the time and one-half rate for the Sunday and Monday rest days."

Hence, in the instant dispute, we believe that Claimant Wilkins filled Oroke's assignment during the five consecutive workdays of that assignment and blanking the position on July 4, did not alter its status as a workday.

Does Section 15 of Article XXI, contravene this conclusion? We do not believe it has such effect. The Carrier having allowed her 8 straight time hours for the July 4th holiday, cannot now negate this fact by urging that she did not "actually" work the forty straight time hours during that workweek. Section 15 does not contain the words "actually" worked. It only provides that, "If an extra employe has worked less than forty straight time hours in a work week * * *" Referee Robertson, in Award No. 76, determined that blanking a position did not alter its status as a workday. On this basis, we are compelled to the conclusion that the Claimant worked forty straight time hours in that workweek, as the record indicates that she was paid for forty straight time hours on this assignment. Consequently, predicated both on Article III, Section 10-b and Article XXI, Section 15, this claim is meritorious.

However, we do not find support for Claimant Zeiner's request for additional compensation. Article XX, Section 8-a, states that an employe will be permitted to advance to preferred tricks provided he indicates such desire. In this regard, Claimant Zeiner did not request such preference of the Carrier. Under these circumstances, his claim is without foundation.

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 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 to the extent indicated in the Opinion.

AWARD

Claim 1 sustained only for S. M. Wilkins.

Claim 2 denied.

Claim 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.