

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

1. The Carrier violates Rule 7, Section (e) of the parties' Agreement in that it fails and refuses to furnish J. E. Britt, Telegrapher-Clerk, Lovelock, Nevada, and all other employes on the Salt Lake Division who have accumulated time under this rule, relief for the full amount of time required by the rule or payment in lieu thereof.

2. The Carrier shall, because of the violation set out in paragraph 1 hereof, commencing sixty (60) days prior to the date upon which this claim is filed (October 24, 1960), and continuing thereafter so long as the violation continues, compensate J. E. Britt and all other employes on the Salt Lake Division who have, or will, accumulate time under Rule 7, Section (e), the difference between the amount paid them for such accumulation and the amount due at the rate of the position occupied. A joint check of the Carrier's records to be made to determine employes entitled to payment and amount due.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective December 1, 1944 (reprinted March 1, 1951, including revisions) and as otherwise amended.

Rule 7 of said Agreement reads:

"RULE 7
REST DAYS

Section (a). Rest days shall be assigned and shall be the same days of each week, but may be changed to meet service requirements

(Carrier's Exhibit "D"), stating ". . . only time worked within the limits of regular assigned hours is counted under provisions of Rule 7, Section (e), and this has been the system wide practice since the rule was adopted . . ."

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim involves an interpretation of Rule 7 (e) of the Agreement.

The Organization charges that Carrier violated and continues to violate Rule 7 (e) of the Agreement by refusing to allow time worked on Sunday or other rest days outside the employees' regularly assigned hours as a credit toward the accumulation of rest days under the Rule.

Section (e) of Rule 7 provides as follows:

"Employees occupying positions requiring work on Sundays, and/or other assigned rest days of less than the hours of their regular week day assignment shall be given rest periods of four (4) consecutive days **after performing thirty-two (32) hours' service** (not compensation) on such days. Extra employees shall be used to relieve during such rest periods." [Emphasis added.]

The Organization contends that whether the work performed is **within** the hours of the week day assignment **or outside** the hours of the week day assignment, it is all time that must be computed toward the accumulation of the 32 hours prescribed as a basis for relief days.

Carrier argues that the qualifying time referred to in Rule 7 (e) is limited to such time spent on Sunday and/or rest days within the limits of the regular week day hours of the assignment, and that such interpretation is clear when the provisions of Rule 7 (e) are juxtaposed with the other sections of Rule 7. Carrier further argues that Rule 7 (e) has been consistently interpreted on the property for almost 18 years without objection by the Employees. (Presumably the Carrier is, in effect, pleading in the alternative, i.e. the rule is clear and unambiguous or alternatively, if it is not then past practice on the property governs.)

The specific issue before this Board is whether the performance of "service" under Rule 7 (e) includes work performed outside the hours of a regular week day assignment.

In the absence of words qualifying the word "service" relative to the time period within which such "service" was to be performed, we hold that time within and outside an employee's regularly assigned daily hours may be included in the computation of time for accumulated rest days as provided in Rule 7 (e). We cannot, as Carrier urges, re-write the provision to read "service within the limits of regular week day hours of assignment".

Our holding is further supported by the fact that qualifying words (viz. "within the hours of their regular week day assignment") are included in Rule 7 (c) relative to payment for the performance of "service".

It would have been a simple matter for the parties to make a similar qualification in Rule 7 (e) if this was what they had intended.

From the Record it is clear that Carrier waived its objections to that portion of the claim relating to "all other employees" by failing to raise the necessary defenses on the property.

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

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1966.