

Award No. 15946
Docket No. TE-14753

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, 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. Carrier violated the Agreement between the parties when it failed and refused to pay W. R. Curry, Agent-Telegrapher, Thorne, Nevada, upon his retirement from service for thirty hours and thirty minutes of rest day performed and accumulated under Rule 7, Sections (d) and (e) prior to his retirement.
2. Carrier shall be required to compensate W. R. Curry four hours' pay at the straight time rate of Agent-Telegrapher, Thorne, Nevada, for each accumulated rest day (or portion of one) not granted.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Rule 7 of the Agreement is the controlling rule in this case and reads as follows:

"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 by giving ninety-six (96) hours' written notice to the employees affected.

Section (b). Positions need not be filled on assigned rest days.

Section (c). Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

OPINION OF BOARD: Claimant here is asserting that at the end of his work shift of Friday, September 21, 1962 when his retirement from service became effective, he had thirty (30) hours of accumulated time under Rule 7 (e), Telegraphers' Agreement "which, I assume, will be pro rated to give proper compensation for this." Claimant also informed the Carrier that he would then have due him fifteen (15) days' vacation allowances for the year 1962 and a similar allowance for the year 1963, having already worked a sufficient number of days to qualify for vacation.

Carrier advised the Claimant that when he was relieved from service he had accumulated a total of 30 hours and 30 minutes.

Carrier advised him that under Rule 7, Section (e) of Memorandum of Agreement dated at San Francisco, July 7, 1950 he had not accumulated the performance of 32 hours' service which, in Carrier's view, Rule 7 (e) requires; and, for that reason "your accumulated time is not payable. . . ."

The parties here agreed to an interpretation of Rule 7 (e) in 1952 which very clearly stipulates that 32 hours of service must be accumulated by the employe in order to qualify for the benefits provided by the San Francisco Agreement of July 7, 1950. Clearly, the Claimant's service does not meet the required 32 hours.

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 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 21st day of November 1967.