



Award No. 15986
Docket No. TE-15485

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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 Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the New York, New Haven and Hartford Railroad, that:

CLAIM NO. 1

The Telegraphers' Agreement was violated at Mount Vernon, New York, when and because on December 25, 1963 and January 1, 1964, Mr. Paul Perez, regularly assigned signal station operator (operator-clerk) was required to perform services on his rest day of the regularly assigned position, which was also a holiday. Claim for each day shown above.

Mr. Paul Perez shall now be compensated the difference between that paid on the respective dates and that to which entitled, one day at time and one-half rate (eight hours). (Railroad Docket 9733 — BU-10011-29.)

CLAIM NO. 2

1. Claim of S. S. Operator William J. Cotter for difference in earnings on December 25, 1963, and January 1, 1964, account of having been used on rest days which happened to be holidays.

2. Claim of Operator F. D. Pitt for difference in earnings on December 25, 1963 and January 1, 1964, when he was used on his rest days which also were holidays.

3. Claim of Relief Agent A. J. Roberto for difference in earnings on November 28, December 25, 1963, and January 1, 1964, when he was used on his relief days which also were holidays. (Railroad Docket 9734 — BU-10012-29.)

CLAIM NO. 3

Carrier violated the Telegraphers' Agreement when it failed to properly compensate Mr. D. T. Forrest, agent-signal station operator, Old Saybrook, Connecticut, on February 22, 1964, a rest day and holiday.

Carrier shall now compensate Mr. D. T. Forrest eight (8) hours at the rate of the position of agent-signal station operator, at time and one-half, in addition to the amount already paid. (Railroad Docket 9740 — BU-10013-29.)

EMPLOYES' STATEMENT OF FACTS: When the General Chairman was unable to settle these three claims in the property handling, he sent the files to the undersigned for further appeal consideration. In reviewing the three files, note was taken that Mr. Duffy, Director of Labor Relations, addressed three letters under date of June 11, 1964, to General Chairman Kelleher, one letter in each file, wherein he stated this:

CLAIM NO. 1

"The instant claim is not distinguishable from Railroad Dockets 9443-A and B involving the use of a regularly assigned employee to perform service on his rest day which is coincidentally a holiday."

CLAIM NO. 2

"The facts in the cases are not in dispute and involve the same issues as those in Dockets 9733 and 9740, concerning which I wrote you today."

CLAIM NO. 3

"The instant claim is not distinguishable from Railroad Dockets 9443-A and B involving the use of a regularly assigned employee to perform service on his rest day which is coincidentally a holiday."

The effect of said statements was that these three claims were not dissimilar in attending circumstances than that covered by Carrier file Railroad Dockets 9443-A and B. Said docket numbers referred to four previous claims, appealed to your Board in 1964, under Docket TE-14751, deadlocked on October 5, 1964.

Inasmuch as a review of the three instant claim cases disclosed that Mr. Duffy was correct in stating that these claims were not distinguishable from the previous cases in pendency before your Board (Docket TE-14751), request was made by the undersigned to the General Chairman that he endeavor to enter into a stand-by agreement with Mr. Duffy, so as to conserve the time of your Board and of the parties. The General Chairman replied that Carrier's representative was unwilling to enter into a stand-by agreement on the basis that these claims are different from those covered by Docket TE-14751.

Carrier's contention that these claims were not distinguishable from those previously appealed to your Board was wholly concurred in by the Employees, and they still concur with that contention. There is no good reason why the earlier case should not decide the claims in this dispute.

Attached as Carrier's Exhibit E is copy of General Chairman's appeal covering Claim No. 3.

Attached as Carrier's Exhibit F is Carrier's decision on Claim No. 3.

A copy of the agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is similar in all respects to Award Number 15985.

The Board holds that the Agreement was violated.

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 8th day of December 1967.