

Award No. 16339
Docket No. TE-15419

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 Company (Pacific Lines), that:

1. Carrier violated the Agreement between the parties when it improperly denied J. F. Fahnhorst his right to work his position at East Pleasanton, California on September 9, 1963.
2. Carrier shall compensate J. F. Fahnhorst in the amount of eight hours' pay at the time and one-half rate.

EMPLOYEES' 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.

At the time cause for this claim arose, there were two basic positions under the Agreement at East Pleasanton, California. Agent-telegrapher, 6:30 A. M. to 2:30 P. M., occupied by Mrs. B. P. O'Shea; telegrapher-clerk, 2:30 P. M. to 10:30 P. M., regularly assigned to and occupied by J. F. Fahnhorst. Regular rest day relief position No. 11 was assigned as follows:

Thursday - telegrapher-clerk Livermore, California, 11:00 P. M. to 7:00 A. M.

Friday - telegrapher-clerk Livermore, California, 11:00 P. M. to 7:00 A. M.

Saturday - agent-telegrapher Livermore, California, 7:00 A. M. to 4:00 P. M.

Sunday - manager wire-chief West Oakland, 7:00 A. M. to 3:00 P. M.

Monday - telegrapher-clerk East Pleasanton, 2:30 P. M. to 10:30 P. M.

Tuesday and Wednesday - Rest Days.

Rest day relief position No. 11 had no regularly assigned incumbent at the time and was being filled by requiring the employees occupying the positions included in this relief cycle to work on their respective rest days, as the Carrier had also failed to provide sufficient extra employees. Claimant Fahnh-

3. On September 3, 1963, Carrier's Division Superintendent issued Telegraphers' Circular No. 23 (Carrier's Exhibit A, Sheet 1 of 2), indicating that Relief Position No. 11 had been vacated by E. M. Thomas and bids would be received therefor until September 13, 1963. By Telegraphers' Circular No. 23(a) dated September 22, 1963 (Carrier's Exhibit A, Sheet 2 of 2), the vacancy on Position No. 11 was awarded to R. C. Meltzian, who subsequently protected that assignment commencing Wednesday, September 25, 1963.

4. During the time the vacancy on Relief Position No. 11 was being advertised, claimant was used on his position on the second rest day with exception of Monday, September 2, 1963 and the following Monday, September 9, 1963. On those dates the three rock, sand and gravel companies observed a National Holiday (Labor Day) on September 2, 1963 and a State Holiday (Admission Day) on September 9, 1963, which resulted in closing down their quarry pit operations at East Pleasanton. As a consequence, there was no need for Carrier to provide service from East Pleasanton between 2:30 P. M. and 10:30 P. M. on those dates. The actual service requirements at East Pleasanton had not been definitely established by Carrier prior to Monday, September 9, 1963, as it was not certain whether or not the State Holiday would be observed by the several rock plants, the extent of observation of this holiday depended on their business conditions. When it was determined that the duties of his position were not required on his rest day, September 9, 1963, Claimant was notified that date approximately two hours prior to what would have been the starting time of that position.

5. By letter dated October 29, 1963 (Carrier's Exhibit B), Petitioner's District Chairman presented claim to Carrier's Division Superintendent in behalf of Claimant for eight hours at the applicable overtime rate of pay September 9, 1963, based on the premise that Carrier is obligated to fill a six-day position and in this instance, Claimant was entitled to work on that day. By letter dated November 5, 1963 (Carrier's Exhibit C), the Carrier's Division Superintendent denied the claim.

6. By letter dated December 5, 1963 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and under date of March 17, 1964 (Carrier's Exhibit E), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regularly assigned occupant of a position of telegrapher-clerk at East Pleasanton, California. This is a six day position with assigned rest days of Sunday and Monday. Work required on Mondays is a part of a regular relief assignment.

During the period involved this relief assignment was vacant and under bulletin. However, no extra employee being available to fill the position while it was in the process of being filled permanently, the employees for which it provided rest day relief, including claimant Fahnhorst, were required to work their rest days.

On Monday, September 9, 1963, the Carrier determined that because it was a state holiday and the chief shipper at East Pleasanton would not be in operation, there would be no need to fill the telegrapher-clerk position that day. Claimant was so notified about two hours before he would otherwise have reported for work.

The Employees' representative, however, contended that the Carrier's action was in error; that Fahnhorst was entitled to work his rest day, and filed claim in his favor for a day's pay at the rest day rate of time and one-half.

The Employees advanced a number of arguments as grounds for the claim. First, they contended that numerous awards of this Board have established beyond dispute the right of a regular employe to perform work of his position on a rest day in the absence of both a regular relief employe and a qualified extra employe. Next, they argued that the Carrier abolished the relief assignment without giving the notice required prior to abolishment. Finally, they contended that the Carrier effected a reduction in force, also without proper notice.

Carrier declined the claim on the ground that because no work was required, no provision of the agreement prohibited its action of blanking the position in question on one of its rest days.

A careful examination of the record convinces us that there was neither an abolishment of a position, nor a reduction in force. Carrier simply decided not to fill the telegrapher-clerk position on its rest day of Monday, September 9, 1963, and no work of that position was performed by anyone.

The question to be decided, then, is whether the Claimant had a demand right to work or be paid for this particular rest day.

The Employees say this question should be answered in the affirmative, and offer two theories in support of such an answer: First, they say the Carrier was obliged to fill the relief position on one of its work days; and, second, that the right of a regular employe to work on his rest days when neither a relief or extra employe is available is no longer open to question.

With respect to the first theory, the Employees have not shown that any rule requires a position to be filled every day it ordinarily works. The guarantee rule clearly runs not to a position, but to employes. And, it specifically excepts the rest days of regular employes from its guarantee of pay.

Concerning the Employees' second theory, we have no quarrel with the proposition that work on rest days belongs first to a regular relief employe if there is one and he is available; secondly to a qualified extra employe; and, then, if neither is available, to the regular employe. This principle is clearly established by the rest day rules and many awards of this Board. But it simply is not applicable to the facts of this case. There was no work to be performed on the Claimant's rest day, so there was nothing on which the principle could operate.

Finally, and of decisive importance, the agreement here involved contains, in rest day Rule 7, Section (b), this specific provision:

"Positions need not be filled on assigned rest days."

The claim is without merit, and must be denied.

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 24th day of May 1968.