



Award No. 16425

Docket No. TE-14982

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY
(Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate O. J. Rickley for service performed on rest days June 4 and 5, 1963 in qualifying on a position at Kaw Junction, Kansas.

2. Carrier shall be required to compensate O. J. Rickley the difference between eight hours' pay at the pro rata rate allowed and eight hours' pay at the time and one-half rate due for each day, June 4 and 5, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1962, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At the time this claim arose, O. J. Rickley was an extra employe assigned to the extra board in charge of Chief Dispatcher H. W. Landreth, who was headquartered at Kansas City, Kansas. On May 28, 1963, Chief Dispatcher Landreth issued the following instructions to O. J. Rickley:

"O. J. Rickley will protect Relief Position No. 5 starting at Topeka Tower 12:01 A. M., Sunday, June 2, 1963, relieving G. S. Oller for assignment at Ellis."

The assignment of Relief Position No. 5 was as follows:

Thursday - 3rd TCPO Lawrence, Kansas, 12 MN to 8:00 AM

Friday - 3rd CTC-TL Kaw Junction, Kansas, 12 MN to 8:00 A. M.

Saturday - 3rd TCPO Topeka Psgr. Sta., 12 MN to 8:00 A. M.

(d) Telegraphers, who in the exercise of seniority, are assigned to position of leverman, and extra telegraphers who are required by the Company to qualify for position of leverman, will be paid at rate of pay of the position for number of days necessary to qualify, not to exceed maximum specified, * * *

The handling of this dispute on the property is set forth in the following letters between representatives of the Organization and representatives of the Carrier:

CARRIER'S EXHIBIT D - Letter dated June 19, 1963 from General Chairman Dent to Carrier's Assistant to Vice President J. T. Singent.

CARRIER'S EXHIBIT E - Letter dated July 14, 1963 from Assistant to Vice President Singent to General Chairman Dent.

CARRIER'S EXHIBIT F - Letter dated July 30, 1963 from General Chairman Dent to Assistant to Vice President Singent.

CARRIER'S EXHIBIT G - Letter dated August 7, 1963 from Assistant to Vice President Singent to General Chairman Dent.

CARRIER'S EXHIBIT H - Letter dated September 6, 1963 from General Chairman Dent to Assistant to Vice President Singent.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant accepted a vacant position, having a work week of Thursday through Monday with assigned rest days of Tuesday and Wednesday, which position required that he break in at Kaw Junction for a period of two days.

He began the job at 12:01 A. M., Sunday, June 2, 1963 and worked the same shift on Monday, June 3, 1963. On Tuesday and Wednesday, June 4 and 5, 1963, the rest days of his new assignment, he broke in at Kaw Junction, for which days he received compensation at the pro rata rate.

Subsequently, his claim was filed alleging that he should have been compensated for these two days at the time and one-half rate, inasmuch as they were this assigned rest days on the new position.

Therefore, our problem is to determine the rate of pay applicable to this situation.

In this connection, Rule 53(d) of the Agreement provides:

"(d) Telegraphers, who in the exercise of seniority, are assigned to position of leverman, and extra telegraphers who are required by the Company to qualify for position of leverman, will be paid at rate of pay of the position for number of days necessary to qualify, not to exceed maximum specified, as follows:

* * * * *

Kaw Junction

3 days

* * * * *

A reading of the foregoing rule clearly indicates that it is a special rule drafted to govern a special situation which situation is present in this case.

Given the existence in the same case of such a special rule and the situation to which it applies, the interpretation and application of that special rule must, to the exclusion of more general rules pertaining to the situation, govern the disposition of the instant case.

Thus, having determined that Rule 53(d) provides the framework of reference for the solution of this problem, the dispositive issue becomes: "What does the phrase, 'rate of pay of position', as contained in Rule 53(d) mean?"

Organization argues that "rate of pay of position" contains an inherent recognition of the fact that for work performed on rest days, the incumbent will be compensated at a higher rate.

We, however, do not believe that this was the concept of "rate of pay of position" intended by the drafters of the Agreement when they drafted this special rule fixing compensation for breaking in time.

To draft this concept of rate of pay of position contended for by Organization into a special rule governing compensation for breaking in time would have involved a consideration of all the situations covered by Rule 30, Section 1, Service on Rest Days, in relation to the problems of necessity, number and occurrence of breaking in days.

We do not believe this occurred. Therefore, the claim will 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 Employee involved in this dispute are respectively Carrier and Employee 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1968.

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