

**Award No. 16636**  
**Docket No. TE-15796**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John J. McGovern, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**THE DENVER & RIO GRANDE WESTERN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Denver & Rio Grande Western Railroad, that:

1. Carrier violated the Telegraphers' Agreement when it failed to properly compensate F. R. Morgan, regularly assigned third trick telegrapher at JN Office, Grand Junction, Colorado, for service performed on January 1, 1965, one of the designated holidays.

2. Carrier shall now compensate Telegrapher Morgan an additional eight hours' pay at the time and one-half rate for service performed on January 1, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** There is in full force and effect an Agreement by and between the Denver & Rio Grande Western Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees, and/or Union, effective June 1, 1946, including changes and agreed to interpretations to date of reissue July 1, 1963, with rates of pay effective May 1, 1962 and as otherwise amended and supplemented. Copies of these Agreements are available to your Board, and are, by this reference, made a part herof.

The question at issue here is, has Carrier bound itself by the Agreement to pay compensation under two separate rules of the Agreement, when an employe is required to work an assigned rest day of his position, which is also one of the seven holidays covered by the Rules Agreement. Whereas this identical question has been presented to your Honorable Board, under the same rules and factual circumstances extant here on at least six (6) occasions, and in each instance your Board has ruled in favor of the Employes (see Awards 12471, Kane; 12453, Sempliner; 11899, Hall; 11454, Miller; 10679, Moore; and 10541, Sheridan), the Carrier refuses to accept this unbroken line of precedent as disposition of the issue.

As to Awards 10541, 10679, 11454 and 11899 mentioned by you in your appeal of this claim, a check of these awards indicates that in Award 10541 the claimant was 'required to work pursuant to the request of the Carrier.' That is not the case on this property. The Carrier simply recognized the employee's rights by agreement to first call for this service. Award 10679, which you cite, states that the author is committed to the doctrine of 'stare decisis' in following Award 10541. He also said that that case was on all fours with Award 10541, so we must presume that that employee was also 'required to work pursuant to the request of the Carrier.' Award 11454 followed Awards 10541 and 10679 as 'precisely in point' so presume that the same facts were present in that case. I have not seen Award 11899, but presume the same to be true. With respect to the doctrine of 'stare decisis' we are inclined to agree with this doctrine where the parties, the Agreement and the facts giving rise to the claim are identical and where palpable error is not in evidence. The rules on the properties in the awards cited do not involve the Carrier not requiring employee to work. Aside from the foregoing, Carrier feels that there is palpable error in the awards cited as outlined in Carrier Members' dissent, and an error once committed should not be slavishly followed. See Second Division Award 3216.

Claim is denied.

Yours truly,

/s/ E. B. Herdman  
E. B. Herdman  
Dir. of Personnel"

**OPINION OF BOARD:** The sole issue to be decided in this case is whether or not Carrier, pursuant to the Agreement, is required to pay compensation to the Claimant under two separate rules, where service has been rendered on an assigned rest day of his position, which also happens to be one of seven holidays covered by the Agreement. This question has been answered in the affirmative in over fifty awards of this Board. In the interest of "Stare Decisis," we will sustain the claim.

**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 by the Carrier.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

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

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