

Award No. 16695
Docket No. TE-16100

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

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

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

1. Carrier violated the Agreement between the parties when on April 23 and April 24, 1965, it worked telegrapher M. R. Miller on his rest days and refused to compensate him for his services at the time and one-half rate of pay.
2. Carrier shall compensate telegrapher M. R. Miller for the difference between eight (8) hours pro rata and eight (8) hours at the time and one-half rate of pay, for April 23 and April 24, 1965.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective July 1, 1963, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. M. R. Miller, hereinafter referred to as Claimant, is an extra telegrapher. For several weeks prior to the date of the instant claim, claimant had been working the telegrapher-ticket clerk position at Canon City, Colorado. Rest days of the telegrapher-ticket clerk position are Friday and Saturday. On Friday, April 23, 1965, claimant was instructed to report to the North Yard telegraph office, Denver, Colorado, to work the second trick position, 4 P.M. to 12 midnight, starting April 23, 1965. Rest days of the second trick position at North Yard are Tuesday and Wednesday.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 thru 6.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Extra telegrapher M. R. Miller began work relieving first telegrapher at Canon City at 9:00 A. M., Wednesday, March 17, 1965, rest days of first telegrapher at Canon City being Friday and

Saturday. Miller worked this assignment through completion of work 6:00 P.M., Thursday, April 22, 1965. Being the senior available extra board telegrapher and there being a vacancy to relieve regular telegrapher B. L. Lynn on 4:00 P.M. to Midnight shift beginning Friday, April 23, at North Yard, Denver, Miller was offered this temporary assignment in accordance with the provisions of the Agreement. Rest days of position on which Miller was used at North Yard are Tuesday and Wednesday. Claim was made for eight hours at overtime rates for April 23 and 24, being allowed eight hours at pro rata rates on the basis of the fact that the rules require use of Miller on the vacancy and under such circumstances Miller assumes the conditions of the position to which he is temporarily assigned, along with past application of the specific rules governing.

OPINION OF BOARD: Claimant, an extra telegrapher, filled a temporary vacancy on a position at Canon City from March 17, 1965 to and including Thursday, April, 22, 1965, taking all of the conditions of that assignment, the rest days of which were Friday and Saturday. According to these facts, immediately preceding the days involved in this dispute, Claimant worked the five days of the position, Sunday, April 18 through Thursday, April 22, 1965.

On Friday and Saturday, April 23 and 24, 1965 there were no extra telegraphers who had not had less than forty hours and Claimant was used to fill a temporary vacancy on position at North Yard, Denver. For this service Claimant was paid at the straight time rate and he claims that he should have been paid at the time and one-half rate. The claim here is for the difference.

On the basis of numerous awards, Claimant, by having worked the five work days of the Canon City position, Sunday, April 18 through Thursday, April 22, "earned" the rest days thereof, Friday and Saturday, April 23 and 24, 1965, and service rendered by him on those days was compensable at the time and one-half rate. See, for example, Awards 6970, 6971, 6972, 6978, 7391, 10391, 10803, 12760, 12497, 13860, 14096, among others.

Carrier, however, contends that under the particular rules of this agreement it was required to use the Claimant and that under such circumstances the straight time rate was proper. It cites and relies principally on Awards No. 12, Special Board of Adjustment No. 525 (these parties), as well as past practices and Rule 20 of the Agreement.

We have carefully examined this contention, and conclude that it is not sound. Nothing in Rule 20 negates the effect of Rule 6, Section 1 (H) which deals with the work week of extra employes and (L) which deals with compensation to be paid for service on rest days. Award No. 12 did not adjudicate any right of an extra employe under these or any other rules. It follows that the claim falls squarely under the principle established and followed in the line of awards referred to above.

Ordinarily this Opinion would stop here. However, the record clearly indicates that the parties have become confused over the interaction of the forty hour week rules and others peculiar to their agreement, especially Rule 20. Therefore, without intending any effect on any other case we make the following observations in the hope that the parties' understanding may be clarified.

Agreement rules should be considered as part of the whole. Therefore, Rule 20 (A) must be applied so as not to nullify Rule 6, Section 1(H). It follows that an extra employee who has "earned" the rest days of an assignment is not "available" within the basic meaning of Rule 20 (A) except at the rest day rate of pay. This meaning is consistent with the parties' understanding which was incorporated into Rule 20 (G). Taken all together, these provisions mean that in the event no extra telegrapher is available for a temporary vacancy except on rest days he "earned" through application of Rule 6, Section 1 (H), the Carrier may avail itself of the means provided by Rule 20 (G) to fill such vacancy, and under such circumstances the extra telegrapher would have no complaint. We should always keep in mind that one of the prime objectives of the 40-hour week rules is to afford all employees two days of rest each week.

Again, we note that these observations are not to be taken as affecting the rights and obligations of parties where the rules and or facts are different.

In accord with the foregoing, the claim will be sustained.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1968.