

Award No. 16774
Docket No. TE-16048

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan E. Cartwright, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. Carrier violated Rule 11 of the Schedule Agreement when it failed and refused to pay E. Fischer in full, i.e., 8 hours at the time and one half rate for work performed on December 25, (Christmas), 1964, and January 1, 1965 (New Years), holidays.

2. Carrier shall, because of the violations set out in paragraphs one hereof, pay Fischer eight (8) hours at the time and one half rate (\$4.1292) for each date December 25, 1964 and January 1, 1965 in addition to payment received.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Chicago, Milwaukee, St. Paul and Pacific 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 or Union, effective September 1, 1949, as amended and supplemented, is available to your Board, and is by this reference made a part hereof.

The question presented by this dispute is, has Carrier bound itself by said Agreement to pay compensation under two separate rules of said Agreement when an employee is required to work on his assigned rest days, which is also one of the seven national holidays covered by the Agreement? This identical question, under the same rules and factual circumstances obtaining here, has been presented to your Honorable Board on at least six (6) prior occasions, and your Board has in each instance ruled in favor of the Employees. (See Awards 12471 (Kane), 12453 (Sempliner), 11899 (Hall), 11454 (Miller), 10679 (Moore), and 10541 (Sheridan). This Carrier refuses to accept this unbroken line of precedent as dispositive of the same issue. Thus, we are again forced to seek relief by submitting the same question to your Honorable Board for adjudication.

claimed an additional penalty payment for work performed on a rest day which is also a holiday, but what the employe is entitled to be paid for service performed by him on his assigned rest day under the service on rest day rule and what this same employe is entitled to be paid for work performed on the holiday under the work on holiday rules.

Yours very truly,

/s/ W. E. Waters
General Chairman

WEW:lh

B/c G. E. Leighty, President"

CARRIER'S STATEMENT OF FACTS: Claimant E. Fischer is the regularly assigned occupant of the third trick Operator position at Sheldon Junction, Iowa which is assigned from 12:00 Midnight to 8:00 A. M., Sunday through Thursday with Friday and Saturday rest days. Said Operator position is a 7-day position.

On Friday, December 25, 1964 and Friday, January 1, 1965, both rest days for claimant Fischer, the Carrier found it necessary to have claimant Fischer work his regularly assigned Operator position during his regularly assigned hours, i.e., 12:00 Midnight to 8:00 A. M. For such service on his rest days claimant Fischer was properly paid 8 hours at the time and one-half rate for working each day, i.e., Friday, December 25, 1964 and Friday, January 1, 1965, in accordance with schedule rules and a recognized past practice of long standing.

Attached hereto as Carrier's Exhibits please find copies of the following letters:

CARRIER'S EXHIBIT A - Letter written by Mr. S. W. Amour, Assistant to Vice President to Mr. W. E. Waters, General Chairman, under date of April 28, 1965.

CARRIER'S EXHIBIT B - Letter written by Mr. Amour to Mr. Waters under date of May 10, 1965.

CARRIER'S EXHIBIT C - Letter written by Mr. Amour to Mr. Waters under date of June 21, 1965.

CARRIER'S EXHIBIT D - Letter written by Mr. Amour to Mr. Waters under date of July 21, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of the Board that the Claimant was assigned to the position of third train operator at Sheldon Junction, Iowa. On December 25, (Christmas) 1964, and January 1, (New Years) 1965, Claimant was required to perform work, both days being his rest days, and also paid holidays. The Claimant seeks compensation at the rate of time and one half for holiday pay under Rule 11(m) Section 2, of the current Agreement, in addition to compensation received at the rate of time and one half under Rule 11, (1) Service on Rest Days. The Carrier contended that Rule 9(b) the overtime Rules applied and that Claimant was entitled to one penalty payment but not both and furthermore that Rule 9(b) expressly

provides that there shall be no overtime on overtime. The Claimant having received compensation at the overtime rate of time and one-half for service on his rest days no further compensation need be paid.

The issue arising from this claim has been decided in numerous awards of this Division which sustain the position of Claimant.

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 12th day of November 1968.