



Award Number 17343

Docket Number TE-16566

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the St. Louis-San Francisco Railway, that:

1. Carrier disregarded the terms of the Agreement between the parties when it refused to properly compensate Telegrapher L. V. Shepard, Hayti, Missouri, for service performed on October 2, 1965.
2. Carrier shall now be required to compensate Mr. Shepard for eight (8) hours at the time and one-half rate for service performed on that date, less compensation already allowed.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective May 16, 1928, revised effective May 16, 1963, and as further revised and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant was the owner and regularly assigned occupant of telegrapher position #2 at Hayti, Missouri, with assigned hours extending from 1:00 A.M. until 9:00 A.M. His position is listed in the Wage Scale of the Agreement as being on Carrier's River Division.

Prior to September 28, 1965, claimant's assigned rest days were Saturday and Sunday. Effective on that date, however, Carrier changed his rest days to Sunday and Monday. He was given proper notice.

Monday, September 27, 1965, was the first day of his old work week. He worked that day and was required to continue working on each of the following dates to and including Saturday, October 2, 1965. Thus he worked six consecutive days. For each of those days, however, Carrier allowed him eight hours at the pro rata rate.

For his work on Saturday, October 2, 1965, claimant had claimed eight hours at the time and one-half rate. Upon being allowed only the pro rata rate, he referred the dispute to his General Chairman, who filed formal claim for the difference on October 20, 1965. Claim was denied on October 22, 1965 and subsequently handled on appeal in the usual manner. It was discussed in conference with Carrier's Director of Labor Relations on January 5 and 6, 1966.

Other facts are revealed in the correspondence exchanged by the parties during the handling of this claim on the property. Copies of that correspondence are appended hereto as TCU Exhibits #1 through #10.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Immediately preceding September 28, 1965 the rest days of Telegrapher Position No. 2 at Hayti, Missouri, occupied by Claimant L. V. Shepard, were Saturday and Sunday.

On September 21, 1965 the claimant was notified that effective Tuesday, September 28, 1965 the rest days on Telegrapher Position No. 2 at Hayti would be changed from Saturday and Sunday to Sunday and Monday. The change in rest days was made effective on the first day of the new work week. The claimant did not work in excess of 40 straight-time hours or on more than five days in either the old work week ending September 27, 1965 or in the new work week beginning Tuesday, September 28, 1965.

The claimant worked Monday, September 27, 1965, which was a day of his former workweek assignment, and then, in accordance with the notice, the claimant commenced work on his new workweek assignment on Tuesday, September 28. The claimant worked each day Tuesday through Saturday for which he was paid the pro rata rate of pay for each day worked.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in the instant claim are uncomplicated and uncontroverted.

Claimant occupied Telegrapher Position #2 at Carrier's Hayti, Missouri, station. Prior to September 28, 1965, Claimant's work week commenced Monday, running for five (5) days, with Saturday and Sunday as rest days. On September 28, Claimant was given proper notice that his rest days were being changed to Sunday and Monday. Claimant, therefore, having his rest days shifted on him after he had commenced his old work week, worked from Monday, September 27 through Saturday, October 2. He now brings claim for time and one-half for the sixth day of the six days he had worked consecutively.

Carrier contends, and we agree, that it has the right to adjust and change an employee's work week and his rest days. Carrier claims that Claimant here worked only one day (Monday, September 27) on his old work week, and since his rest days had been altered, he had worked only five (5) days on his new work week. Consequently, they disallowed time and one-half for Saturday, October 2.

The pertinent sections of the existing Agreement are set forth below:

"ARTICLE I.

(1) Employes, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners) agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in

appended wage scale, "also tower and train directors, towermen, levermen, staff men, are covered by this Agreement and are hereinafter collectively referred to as employees, and when so referred to all are included."

"ARTICLE II.

(b) Work in excess of forty straight time hours in any work week shall be paid for at time and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra list, or where days off are being accumulated under paragraph (g) of Article II-A, Section 1.

(c) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Article II-A, Section 1."

"ARTICLE II-A.

(i)—Beginning of Work Week.

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

Carrier relies heavily on Awards 7719 and 10755. We find the latter award not in point because a "guarantee provision" was in effect. As to Award 7719, we find that it has been sufficiently overturned by a preponderance of more recent Awards. (See Awards 9962, 10497, 10530, 10674, 10744, 10901, 11036, 11322, 11549, 11991, 11992, 12319, 12600, 12782, 12797, 12798, 12799, 12911, 12973, 13113, 13299, 13661, 13711, 14116, 14644 and 15338.)

"We agree that the Carrier possesses the right to change rest days. However, this Board has repeatedly held that an employee cannot be required to work more than five consecutive days or forty hours without overtime compensation." Award 12911.

This Board finds no justification in the present claim to disturb the position we took in that and the other above-cited awards, and consequently, we sustain this 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.

A W A R D

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 July 1969.