



Award Number 17350

Docket Number TE-16654

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**SOUTHERN PACIFIC COMPANY—TEXAS AND
LOUISIANA LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas and Louisiana Lines), that:

CLAIM NO. I

1. Carrier disregarded the terms of the Agreement between the parties when it failed to properly compensate Agent-Telegrapher J. C. Linney, Skidmore, Texas, for service performed on July 5, 1965, a designated legal holiday and an assigned rest day.
2. Carrier shall now compensate Claimant the amount due him for the service performed on that date, less compensation already allowed.

CLAIM NO. II

1. Carrier disregarded the terms of the Agreement between the parties when it failed to properly compensate Telegrapher-Clerk J. L. Trahan, Morgan City, Louisiana, for service performed on January 1, 1966, a designated legal holiday and an assigned rest day.
2. Carrier shall now compensate Claimant the amount due him for the service performed on that date, less compensation already allowed.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective December 1, 1946, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant for Claim I was the owner and occupant for position of agent-telegrapher, Skidmore, Texas. The position was assigned to work 8:59 A.M. until 4:59 P.M. daily. Sundays and Mondays were Claimant's assigned rest days. On those days the position was assigned to a regularly assigned relief employee.

On Monday, July 5, 1965, Claimant was called out to, and did, perform service from 6:00 A.M. until 9:59 A.M., a total of three hours, 59 minutes. July 5, 1965 was not only a national holiday to be observed under the terms of the Agreement, but was also one of Claimant's rest days.

it was necessary to call out a telegrapher at 6:00 A.M., July 5. This was the second of J. C. Linney's rest days. E. J. Cramer, the relief agent-telegrapher, had worked on July 4 from 8:59 A.M. until 5:59 P.M., a total of nine hours. Due to the operation of the Hours of Service Act, Cramer could not work at 6:00 A.M. even for one hour. Accordingly, Linney who had legal rest under the law to work a maximum of nine hours was called. He came on duty at 6:00 A.M.

The second shift telegrapher had been required to work overtime on the shift starting July 4, from 1:59 A.M. to 3:59 A.M., having been given interval of release to avoid violation of the Hours of Service Act. This overtime work would prevent his being able to return to duty until 6:59 P.M., July 5. Accordingly, the relief Agent-Telegrapher Cramer was not placed on duty until 9:59 A.M. so that he could work until 6:59 P.M. when the second shift telegrapher-clerk could resume duty. Linney was held on duty until 9:59 A.M., a total of three hours and fifty-nine minutes.

time rate. Allowance was made of 3 hours and 59 minutes at the time and day, from 6:00 A.M. to 9:59 A.M., a total of 3 hours and 59 minutes. Linney presented claim for a total of 21 hours and 59 minutes at the overtime rate. Allowance was made of 3 hours and 59 minutes at the time and one-half rate.

These are the facts in Claim I as listed in Petitioner's letter of September 8 giving notice of intent to file ex parte submission of this dispute.

The facts in the claim listed as Claim II by petitioner are as follows:

There was a vacancy on the third shift telegrapher-clerk at Morgan City, La., December 31, 1965, for which no extra telegrapher was available. Three shifts are employed at Morgan City, around the clock, seven days per week. A regular relief telegrapher relieves each of the regular telegraphers for their two rest days each week. To fill the vacancy, the relief telegrapher was instructed to work the third shift and the regular telegraphers worked their rest days until an extra telegrapher was available. J. L. Trahan was the regular telegrapher-clerk assigned to first shift, 8:01 A.M. to 4:01 P.M. His rest days are Saturday and Sunday. He worked 8:01 A.M. to 4:01 P.M., Saturday, January 1, 1966, one of his rest days which was also a holiday as provided in the agreement. For the eight hours service performed January 1, Trahan made claim for payment of 16 hours at time-and-one-half. The claim was declined and the time worked, 8 hours, was allowed at time-and-one-half rate.

Both claims were handled on the property in the usual manner and after conference was declined by Manager of Personnel, highest officer designated by the Carrier for handling such matters.

(Exhibits not reproduced)

OPINION OF BOARD: The facts giving rise to the two claims covered in this docket are not in dispute. In Claim 1, Claimant was the regular occupant of the agent-telegrapher position, assigned hours from 8:59 A.M. to 4:59 P.M., Tuesday through Saturday, with Sunday and Monday rest days. The position is a seven-day position, being relieved on Sunday and Monday by a regular relief employe.

In 1965, the July 4th holiday was observed on Monday, July 5, coincidentally with one of Claimant's assigned rest days. Claimant was called out

on Monday, July 5, working from 6:00 A.M. to 9:59 A.M. For this service he was paid 3 hours and 59 minutes at the time and one-half rate. Thereafter, a claim was presented and progressed that Claimant was improperly paid, it being contended that for service on his rest day between 6:00 A.M. and 8:59 A.M., he was entitled to be paid 2 hours and 59 minutes at the time and one-half rate under Rule 5, the Call Rule, and a minimum of 8 hours at the time and one-half rate for service between 8:59 A.M. and 9:59 A.M., under Rule 9, Section 1(M), viz.:

"Section 1 (M)—Service on Rest Days

Employees required to perform service on their assigned rest days within the hours of their regular weekday assignment shall be paid on the following basis:

On Seven-day positions:

At the rate of time and one-half with a minimum of eight (8) hours.

* * * * *

Time worked before or after the regular week day assignment shall be paid for in accordance with overtime provisions of Rule 4 or the call provisions of Rule 5."

For service on the holiday, between 6:00 A.M. and 8:59 A.M., it is contended that Claimant is entitled to 2 hours and 59 minutes at the time and one-half rate under Rule 5, the Call Rule, and a minimum of 8 hours at the time and one-half rate for service between 8:59 A.M. and 9:59 A.M., under Rule 9, Section 2, viz.:

"Section 2—Holiday Work

Time worked within the hours of the regular week day assignment on the following holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid on the following bases:

On seven-day positions:

At the rate of time and one-half with a minimum of eight (8) hours.

* * * * *

Time worked before or after the regular weekday assignment shall be paid for in accordance with the overtime provisions of Rule 4 or the call provisions of Rule 5."

Before the Division, however, the Organization abandoned that part of the claim which calls for double compensation under the same compensation rule—Rule 5.

In Claim 2, the Claimant was the regular occupant of telegrapher-clerk position, assigned hours of work from 8:01 A.M. to 4:01 P.M., Monday through Friday, with Saturday and Sunday as rest days. This position is a

seven-day position, being relieved on Saturday and Sunday by a regular relief employee.

Due to the regular relief employee filling temporary vacancy on another position, Claimant worked the rest day of his position on Saturday, January 1, 1966, which was also a holiday. For service performed that day, Claimant was paid 8 hours at the time and one-half rate. Claim was presented and progressed that he was improperly paid, it being contended that for service on his rest day he was entitled to 8 hours at the time and one-half rate under Rule 9, Section 1(M), quoted above, and for service on the holiday, 8 hours at the time and one-half rate under Rule 9, Section 2, quoted above.

Beginning with Award 10541, which has been followed in numerous subsequent awards, the instant issue has been decided in favor of the Organization. The Carrier, however, holds that Award 10541 is palpably wrong. In Award 14138, this Referee had occasion to consider the question and what was there held is applicable herein, to wit:

"It is noteworthy, that in Award 10541, the Carrier Members filed a well-documented dissent. They have adhered to their position in each of the above-mentioned subsequent Awards, via the medium of a dissent.

"In the instant dispute, we are again requested to review our position and deny this Claim, despite the established precedents. In this respect, we are referred to a 'Memorandum to Accompany Award 1680', where the respected Referee (Garrison) was confronted with a similar request. In a reasoned discourse on this subject he voiced the opinion that, '(c) All semblance of predictability and uniformity of treatment in the interpretation and application of the rules would disappear.' Although we are reluctant to perpetuate a condition which *prima facie* appears to run counter to the norm, nevertheless, the effective agreement between the parties does not prohibit such payment, nor is it unconscionable.

"It appears to us that in the present posture of these precedent Awards, the proper form is the bargaining table."

Accordingly, we hold that the Agreement was violated.

In Claim 1, the Claimant was entitled to be paid 2 hours and 59 minutes for service between 6:00 A.M. and 8:59 A.M., 8 hours at the time and one-half rate under Rule 9, Section 1(M), and 8 hours at the time and one-half rate under Rule 9, Section 2, for service performed between 8:59 A.M. and 9:59 A.M., which was within the hours of Claimant's regular week-day assignment, less what Carrier paid him for service on July 5, 1965. See Awards 9485 (Rose), 13043 (Wolf) and 13842 (Dorsey). Compare Award 13678 (Hutchins) which involved the present parties.

In Claim 2, the Claimant was entitled to be paid 8 hours at the time and one-half rate under Rule 9, Section 1(M), for service on his rest day, and 8 hours at time and one-half rate for service on the holiday under Rule 9, Section 2, less what Carrier paid him for service performed on January 1, 1966. See Award 14138, and many others, to the same effect.

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

Claims sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1969.