



Award Number 17520

Docket Number TE-16643

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Texas and Pacific Railway, that:

1. Carrier violated the Agreement when it improperly compensated Telegrapher B. R. Gardner, Abilene, Texas, for service performed on December 25, 1965.
2. Carrier shall compensate B. R. Gardner for eight hours' pay at the applicable time and one-half rate as holiday payment and eight hours' pay at the applicable time and one-half rate account working rest day, less compensation already allowed, if any.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective May 15, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. B. R. Gardner, hereinafter referred to as Claimant, is regularly assigned to the first shift position at Abilene, Texas, with rest days Saturday and Sunday.

Saturday, December 25, 1965, in addition to being Christmas, was one of Claimant's rest days. Claimant is ordinarily relieved on his rest days by a regularly assigned relief telegrapher; however, on claim date the regularly assigned relief telegrapher was not able to work the position. Claimant was required to work on December 25, 1965.

Carrier has allowed Claimant eight (8) hours' pay at the time and one-half rate for service performed on December 25, 1965.

Carrier has allowed an identical claim in the past. Employees refer to claim in behalf of C. H. Pierce, Big Sandy, Texas, for service performed on November 28, 1963, (Thanksgiving), and December 25, 1963, (Christmas), covered by Carrier's file T-33615. By letter dated January 12, 1963, former Director of Personnel O. B. Sayers instructed the Carrier's payroll department to allow the Claimant eight hours' pay at time and one-half rate for working a rest day and an additional eight hours' pay at the time and one-half rate for working on a holiday, less compensation already allowed.

"These claims result from the claimants being required to work their rest day which was also a holiday. You are claiming sixteen hours at the time and one-half rate of pay for eight hours' service on the holiday, although claimants performed only eight hours of service for which they have been compensated at the time and one-half rate of pay.

There is no rule in the agreement providing for payment greater than time and one-half for service performed even though the rest day and the holiday did occur simultaneously. Having paid the time and one-half rate for service performed, Carrier has satisfied its obligation to these employees. There is no rule which requires pyramiding or compounding two or more penalties to the same situation. It follows that the payment of either excludes the other, thus the rules are mutually exclusive.

In view of the foregoing, claims are without merit or rule support and are respectfully declined."

9. Carrier declined payment as requested on the basis that the proper compensation has already been made and there is no merit in requesting an additional allowance of eight hours at the time and one-half rate.
10. Claim was progressed in the proper manner on the property and has now been progressed to your Board.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, the regularly assigned first shift telegrapher at Abilene, Texas, was required to work on December 25, 1965, during the hours of his regular weekday assignment. Saturday, December 25, was the assigned rest day of his position and also a recognized holiday. He was paid for eight hours at time and one-half rate for services rendered on this date. Claim requests allowance of an additional eight hours at time and one-half rate.

Beginning with Award 10541, the issue presented in this Docket has been decided in numerous Awards of this Division. This Referee has decided the identical issue in Awards 14138 and 17350. For the reasons stated in those awards 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.

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 6th day of October 1969.