



Award Number 17670

Docket Number TE-17001

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 & Louisiana Lines), that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate Mrs. M. E. Meyer, regular occupant Swing Position Tower 17 Rosenberg, Texas, for January 1, 1966, a holiday covered by the Agreement.
2. Carrier shall, because of the violation set forth above, compensate Mrs. M. E. Meyer a day's (8 hours) pay at the time and one-half rate of the position to which assigned in addition to compensation already received for this day.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Southern Pacific Lines in Texas and Louisiana hereinafter referred to as Carrier, and its employees in the classes specified therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective December 1, 1966, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The issue here is Carrier's liability for time lost by Claimant returning to her regular assignment after being diverted from such assignment by Carrier to perform relief work on another position in the absence of qualified extra employees.

The material and relevant facts are as follows: Mrs. M. E. Meyers, hereinafter referred to as Claimant, is the regular occupant of a swing (rest day relief) position in Tower 17, Rosenberg, Texas, with the following assigned hours:

7:01 A.M.—3:01 P.M.—Saturdays and Sundays;
3:01 P.M.—11:01 P.M.—Mondays and Tuesdays;
11:01 P.M.—7:01 A.M.—Wednesdays;
Rest Days—Thursdays and Fridays.

On November 3, 1965, Chief Dispatcher Springfield wired Claimant to protect the third shift telegrapher-clerk-towerman's position in Tower 17, Rosenberg until further advised, that the regular occupant of the position

(as that Rule was amended by the National Holiday Rule) and was allowed. As no service was performed on January 1, 1966, the claim for 8 hours time-and-one-half rate was not allowed.

Claim for the additional 8 hours at time-and-one-half rate was appealed up to and including the Manager of Personnel, highest officer of the Carrier designated to handle such claims, who also declined the claim. Matter was discussed in conference with the General Chairman of the Union, but no agreement was reached. **CARRIER'S EXHIBIT NO. 1** reproduces the correspondence with the General Committee of the Union,

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was regularly assigned as relief-teleg-rapher-clerk-towerman at Tower 17, Rosenberg, Texas with the following schedule:

Saturday—7:00 A.M. to 3:00 P.M. Shift
Sunday—7:00 A.M. to 3:00 P.M. Shift
Monday—3:00 P.M. to 11:00 P.M. Shift
Tuesday—3:00 P.M. to 11:00 P.M. Shift
Wednesday—11:00 P.M. to 7:00 A.M. Shift
Thursday—3:00 P.M. to 11:00 P.M. Shift
Friday—Rest Day

On November 3, 1965, the regularly assigned position holder of the 11:00 P.M. to 7:00 A.M. shift became ill at a time when there was no extra telegrapher available to relieve him and Carrier diverted Claimant from her relief assignment to work this third shift assignment until the incumbent of this shift could return to work. The regular incumbent returned to work on January 1, 1966. Claimant concluded her relief work at 7:00 A.M., January 1, 1966, but was prevented from working her own shift of 7:00 A.M. to 3:00 P.M. on January 1, 1966. Claimant then presented claim for 8 hours at the time and one-half rate under Rule 9, Section 2 and Rule 13(a).

She was paid 8 hours at the pro rata rate under Rule 7 which guarantees one day's pay if ready for service and not used. Carrier declined payment on Claimant's time and one-half claim for the reason that no service was performed on the date for which claim is made.

Under the facts presented in the record herein, this Board finds that Claimant was diverted from her regular assignment and that the diversion did not end until Claimant was free to return to her regular assignment (7:00 A.M. January 1, 1966). This Board further finds that because of the diversion from her regular assignment, she was prevent from returning to her regular 7:00 A.M. to 3:00 P.M. shift on January 1, 1966. Under authority of Awards Nos. 16290 (Goodman) and 16541 (Devine), these facts give rise to a sustaining award.

It is true that the Hours of Service Act precluded Claimant from working her regular assignment at the conclusion of her diverted assignment; however, this argument was not raised on the property by Carrier and, therefore,

can not be considered by this Board. Also, this Board finds that the diversion of Claimant's assignment was the proximate cause of Claimant's denial of her work day of January 1, 1966—not the Hours of Service Act.

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 22nd day of January 1970.