



Award Number 17937

Docket Number TE-17244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate R. D. Scott for eight (8) hours at time and one-half rate for attending an investigation as a company witness on October 13, 1966, a rest day of the position he was filling.
2. Carrier shall compensate R. D. Scott for eight (8) hours at the time and one-half rate, less three hours at the pro rata already allowed.

EMPLOYEES' STATEMENT OF FACTS: The claim in this case is based upon the provisions of an Agreement effective May 1, 1953, as amended and supplemented, made between the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as Carrier, and the Transportation-Communication Employees Union, referred to hereafter as Employees and/or Organization, and is made a part hereof.

From July 3, 1966 until March 16, 1967, Mr. R. D. Scott, was temporarily assigned to the position of relief wire chief-operator at Brookfield, Missouri and at the time of the instant claim his assigned hours were:

Friday	third shift operator	11:00 p.m.- 7:00 a.m.
Saturday	third shift operator	11:00 p.m.- 7:00 a.m.
Sunday	first shift wire chief	7:00 a.m.- 3:00 p.m.
Monday	second shift wire chief	3:00 p.m.-11:00 p.m.
Tuesday	second shift wire chief	3:00 p.m.-11:00 p.m.
Wednesday	Rest Day	
Thursday	Rest Day.	

On Thursday, October 13, 1966, an assigned rest day, Claimant was called by Trainmaster Ketchum as a company witness at an investigation held between the hours of 1:00 P.M. and 4:00 P.M. Mr. Scott submitted a time slip on October 13, 1966 for eight (8) hours at the time and one-half rate for being called as a company witness on his rest day. This claim was handled on the property up to and including a conference with the highest officer designated by the Carrier to receive such claims and has been denied. However,

Claimant was allowed three (3) hours at the pro rata rate for appearing as a company witness on the date of the instant claim.

Correspondence reflecting the handling on the property is attached hereto as TCU Exhibits 1 through 10.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: Claimant in this case is an unassigned extra employee. Immediately prior to and subsequent to the date of the claim, he was temporarily working as Relief Wire Chief-Relief Operator at Brookfield, Missouri, as follows:

Friday and Saturday	3rd Operator	11 PM to 7 AM
Sunday	1st Wire Chief	7 AM to 3 PM
Monday and Tuesday	2nd Wire Chief	3 PM to 11 PM
Wednesday and Thursday	Rest Days	

On Thursday, October 13, 1966, a rest day of the position on which he was relieving. Claimant was requested to attend an investigation as a witness for Carrier, and he was compensated for the time spent at the investigation in conformity with the provisions of Rule 12 of the collective agreement. The Union contends that Claimant should have been paid a minimum of eight (8) hours at punitive rate under the provisions of Rule 8, whereas Carrier contends proper payment was made under Special Rule 12, captioned "Witnesses-Examinations."

The Schedule of Rules Agreement between the parties, effective May 1, 1953, is by reference made a part of this submission.

OPINION OF BOARD: Claimant in this case was temporarily assigned to the position of relief wire chief-operator at Brookfield, Missouri from July 3, 1966 until March 16, 1967. At the time of the claim, October 13, 1966, he worked five days per week Friday through Tuesday inclusive with Wednesday and Thursday being his assigned rest days. On the date of the claim, Thursday, one of his assigned rest days, he was required by the Carrier to attend an investigation for a period of less than three hours. Carrier compensated him for three hours at the pro rata rate whereas claim has been submitted for eight hours at the punitive rate of time and a half.

The Organization contends that their position is fully supported by Rule 8, Supplement to Decision No. 5—Service on Rest Days, paragraph II, which reads as follows:

"II. Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following basis:

A.(1) Employees occupying the positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work."

Arguendo, Claimant categorically states that he was filling a position which required a Sunday assignment, and having rest days of Wednesday and Thursday, he is entitled to be paid the minimum of eight hours at time and a half consonant with the provisions of the above quoted Rule.

The Carrier however relies on the provisions of Rule 12 and more specifically Rule 12(c) thereof, which reads as follows:

"Witnesses — Examinations

"12(c) Unassigned extra employees used under this rule shall receive not less than a minimum of three (3) hours and a maximum of eight (8) hours' pay at the rate of the position last previously worked."

We take cognizance of the contentions of the Carrier that this is a special rule and that such a rule does take precedence over a general rule. We do not take exception to this well recognized general principle. Under the peculiar factual situation with which we are confronted, Rule 12(a), (b) and (d) are inapplicable to the instant case. The question then posed is whether Carrier is correct when it states that 12(c) is the governing rule.

From an examination of the record, it would appear that Claimant was temporarily assigned to the position from July 3, 1966 to the date of the claim on October 13, 1966. Was he therefore an assigned or unassigned extra employee? We must in the interpolation of contracts, give meaning to the words as they are construed in the ordinary, customary parlance of the industry. By so doing, we must conclude that confronted with this factual situation, Claimant was an assigned, not an unassigned extra employee and as such, while filling the position, was entitled to all the benefits of the position. Not being an unassigned extra employee, paragraph 12(c) is not applicable to this dispute.

We agree with the Organization that Rule 8, Supplement to Decision No. 5—Service on Rest Day, Paragraph II thereof, quoted *infra*, is applicable. Claimant performed service on his rest day and should be compensated at the punitive rate. Since Carrier has already paid him 8 hours at the pro rata rate, it should pay him the difference between that which he has received and the eight hours at the punitive rate of time and a half.

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 in accordance with the Opinion.

A W A R D

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.

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