

Award No. 18000

Docket No. TE-17867

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Kansas City Southern Railway, that:

1. Carrier violated the Agreement between the parties when it refused to compensate Agent-Operator B. E. Blevin for eight hours, on June 24, 1967, a day that he was held off of his regular position, Relief Position No. 14.

2. Carrier shall compensate B. E. Blevin for eight hours at the rate of pay of the agent-operator at Poteau, Oklahoma.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties, effective January 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose out of Carrier's action in requiring a regularly assigned employe to perform relief work and denying him compensation of eight (8) hours at the rate of his regular assignment on one of his assigned work days which was a rest day of the assignment he was filling.

(b) ISSUES

Compensation due a regularly assigned employe who is required to perform relief work.

with the rule, for which he was allowed a 2 hour 30 minute call at time and one half. Furthermore, claimant was not released nor available for service at Poteau on Saturday, June 24, 1967, and his claim for eight hours was, therefore, declined.

OPINION OF BOARD: The essential facts are not in dispute. Claimant was regularly assigned to Relief Assignment No. 14, Saturday through Wednesday with Thursday and Friday as rest days. He was used by the Carrier to fill a vacancy from Monday, June 19, through Friday, June 23, 1967. That position had Saturday and Sunday as rest days. Claimant also worked two and one-half (2½) hours on Saturday, June 24. He was paid straight time for the hours he worked on Monday, Tuesday and Wednesday, June 19, 20 and 21, and time and one-half his regular rate for the hours he worked on Thursday and Friday, June 22 and 23, because they were rest days of Claimant's regular assignment, and he was also paid time and one-half his regular rate for the hours he worked on Saturday, June 24, because he had worked more than 40 hours that week.

It is the Employees' position "that Rule 8-12 means a diverted employee's daily compensation will be no less than he would have earned on his regular assignment." Since Saturday, June 24, was a work day on his regular assignment, say the Employees, he is entitled to an additional eight (8) hours' pay at his regular rate.

Carrier argues that Rule 8-8(p)(4) is applicable in this case, and that the Claimant was properly compensated as therein provided.

The issue is whether Rule 8-12 or Rule 8-8(p)(4) is applicable.

We have no quarrel with the findings in Awards numbered 6781, 14643 and 17801, which basically hold that travel time and overtime pay may not be set-off against time lost by an employee because of a diversion. But the facts and circumstances in the cited cases are not comparable to those here. No rule like 8-8(p)(4) was considered in those awards.

It is admitted that the Claimant was properly diverted under Rule 8-8(p)(4). And, that rule provides that such an employee "will take the conditions (hours and rest days) of such latter position." When Claimant was assigned to the vacancy he took Saturday and Sunday as his rest days. Saturday, June 24, was his rest day. Rule 8-8(p)(4) is a specific rule with clear and meaningful language. There can be no ambiguity about its meaning and intent. Claimant was properly paid thereunder.

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