

Award No. 18699
Docket No. TE-18782

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Missouri-Kansas-Texas Railroad Company, T-C 5722, that:

1. Carrier violated the provisions of the Telegraphers' Agreement between the parties hereto in improperly relieving Telegrapher-Clerk B. J. Harmon, Tulsa, Oklahoma, on his assigned Saturday and Sunday rest days, January 25, and 26, 1969.

2. Carrier shall compensate B. J. Harmon for eight (8) hours at the time and one-half rate for January 25 and 26, 1969 (each date), total claim of \$79.20.

3. Carrier violated the provisions of the Telegraphers' Agreement between the parties hereto, when on Saturday, January 25, 1969 and Sunday, January 26, 1969, it required extra Telegrapher R. F. Terrell to perform service on his rest days but failed to properly compensate him.

4. Carrier shall now compensate Telegrapher R. F. Terrell the difference in the amount allowed for each date, i.e., January 25, 1969 (eight hours' pay pro rata rate) and January 26, 1969 (eight hours' pay pro rata rate) and the amount claimed for each date, i.e., ten hours and fifteen minutes at the time and one-half rate for services rendered at Tulsa, Oklahoma, total shortage existing being \$48.67.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute herein is based upon various provisions of an Agreement made between the Missouri-Kansas-Texas Railroad Company and the T-C Division, BRAC, dated September 1, 1949, as amended and supplemented, and by this reference is made available to your Board. Claim was handled properly up to and including the highest Carrier Officer designated to handle claims and grievances, (conference July 30, 1969) and denied.

The claim arose because Carrier refused to compensate Claimant Number 1, at the time and one-half rate for improperly relieving him on his two rest

Telegrapher-Clerk B. J. Harmon, Tulsa, Oklahoma, on his assigned Saturday and Sunday rest days, January 25 and 26, 1969, with an Extra Board Telegrapher who had just completed a five day assignment at another point on the Carrier's line.

The claim was declined by Superintendent T. G. Todd on March 6, 1969; claim was appealed by General Chairman Riley to the Manager of Personnel on April 7, 1969; was declined by the undersigned on June 5, 1969; discussed and declined in conference with the undersigned on July 30, 1969.

Attached hereto and made a part hereof, is copy of all correspondence exchanged by the parties in handling this matter as Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD; Claimant Harmon is a regularly assigned telegrapher at Tulsa, Oklahoma, working Monday through Friday, with Saturday and Sunday as rest days. The rest days are part of a regular rest day relief assignment.

Claimant Terrell is an extra employe who was being used to take the place of absent regular employes.

During the week beginning on Monday, January 20, 1969, Terrell worked a position at Broken Arrow, taking the place of the regular occupant, who was on vacation. He worked all five work days of this position, or through Friday, January 24.

Beginning on Saturday, January 25, 1969, the occupant of the regular relief assignment which provides rest day relief for Claimant Harmon was granted a vacation, being relieved for that purpose by Claimant Terrell.

Thus, the two days in question, January 25 and 26, were the sixth and seventh consecutive days of work for extra telegrapher Terrell.

The Employes contended that under these circumstances Carrier erred in using extra telegrapher Terrell to relieve regular telegrapher Harmon on these two days. They claim that Harmon, having a superior right to that of Terrell, was deprived of two work at time and one-half rate; and that Terrell, because of being required to work on the rest days he had earned by working all five work days of the Broken Arrow position, should have been paid at the rest day rate of time and one-half instead of the straight time rate which was paid. They also claim an additional two hours and fifteen minutes each day for Terrell, apparently because of the difference in assigned hours of the positions at Tulsa and Broken Arrow.

The basic issues in this case have long been settled by numerous awards of this Board where rules essentially the same as those here involved were interpreted and applied.

— These awards clearly hold that work on assigned rest days must be assigned to the regular incumbent if neither the regular relief employe nor a qualified extra employe is available; and that an extra employe who is filling another assignment or observing the rest days earned on such other assignment is not "available" in preference to the regular incumbent of the position,

to be relieved. See Awards 6970, 6978, 9393, 10391, 11039, 13034, 14096, 16481, among many others.

The claim of Harmon must be sustained.

Some of these, and numerous other awards hold that an extra telegrapher who has worked all five work days of a position is entitled to the rest days of such position, and if he is required to work on such earned rest days he is entitled to be paid the rest day rate of time and one-half therefor. See Award 16695 and those cited therein.

The record before us does not show that Terrell worked more than eight hours on each of the two days involved, and no basis is established for payment of the additional two hours and fifteen minutes claimed for him. His claim, therefore, will be sustained only for the difference between straight time and time and one-half for eight hours on the two days.

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 as indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.