

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISVILLE & NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville & Nashville Railroad that: G. O. McDonald, first trick clerk-operator at Pascagoula, Mississippi, was arbitrarily required to suspend work during his entire tour of duty on July 4, 1935; that the work he would have performed on that day was assigned to and performed by the Agent and, that McDonald shall be paid for the day, eight hours at the scheduled pro-rata rate, account denied the privilege of working his trick and of receiving the compensation he would have earned on that day"

STATEMENT OF FACTS.—G. O. McDonald was regularly assigned first trick clerk operator at Pascagoula, Mississippi, with hours 8:00 a. m. to 4:00 p. m. Bulletin under which he acquired the position advertised it as a seven-day assignment, and ordinarily he worked seven days per week. On July 3, 1935, the agent, a monthly paid employe included in the Telegraphers agreement, was instructed to handle the work of the first trick operator in addition to his own customary duties on July 4, a holiday.

POSITION OF EMPLOYEES.—

"On July 3, 1933, Chief Dispatcher, D. B. Holt, Louisville & Nashville Railroad Company issued Bulletin No. 58, on which the position of clerk-operator at Pascagoula, Mississippi, hours 8:00 A. M. to 4:00 P. M., rate of pay 63¢ per hour, seven days per week, was advertised. See Exhibit "A".

"This advertised vacancy was bid in by G. O. McDonald in accordance with Rule 28 (a), Telegraphers' Agreement which reads as follows:

"When permanent vacancies occur or new positions are created, they will be advertised to all employes on that division within five (5) days; bulletin will specify tour of duty and hourly rate of each position. Application in duplicate (in the hand writing of the applicant) must be filed within ten (10) days, and one copy will be mailed to the applicant before advertisement closes. Permanent appointments will be made within thirty (30) days from date of advertisement, etc.'

"G. O. MacDonald obtained this position in accordance with the above rule of the Telegraphers' Agreement.

"The bulletin, Exhibit "A", stipulated the first trick clerk-operator position at Pascagoula as a seven day per week assignment and McDonald the regularly assigned incumbent of the job was working seven days per week. On July 4, 1935, Mr. W. M. Boykin, Asst Supt., sent Agent J. R. Watts and Operator McDonald, the following message:

"MOBILE, July 3, 1935, 12:40 P. M.

"J. R. Watts, Agent, G. C. McDonald, Opr., Pascagoula, Miss.

"J. R. Watts will work first trick operator Pascagoula tomorrow July 4th, account holiday.

"W. M. BOYKIN, Asst. Supt."

"Rule 7 (a) reads as follows:

"Regular assignments shall have a fixed starting time, and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected."

"The position to which McDonald was assigned had a fixed starting time of 8:00 A. M., seven days per week. But despite this fact he was notified at 12:40 P. M., July 3rd that he would not be permitted to start work at 8:00 A. M., July 4th, which gave him less than 20 hours notice of the change.

"During conferences and in letters, the management has taken the position that it had the right to suspend McDonald from work on July 4th, which was a holiday.

* * * * *

"We concede that if there is no work to perform and no work is performed on Sundays and Holidays an employe can be excused from duty on Sundays and Holidays. However, this was not the case in this instance because there was work to perform and was actually performed by another employe on July 4th, the day that McDonald was excused from duty.

* * * * *

"This work that Agent Watts performed on July 4th was the routine work that McDonald performed regularly during his assigned hours on other days of the week. We contend when the usual and customary duties of McDonald, first trick clerk-operator could not be dispensed with on July 4th, a holiday, because 'conditions of business' would not permit, that he, and no one else, was entitled to perform that work and it could not under Rule 8—(a) be delegated to some other employe.

* * * * *

"McDonald, first trick clerk-operator was regularly assigned to and performed designated work seven days per week. On July 4, 1935, another employe was delegated to perform this work. In transferring this work to another employe McDonald was deprived of his right to work his regular assignment on that day and consequently lost a day's pay."

* * * * *

POSITION OF THE CARRIER.—The contention of the carrier is that its action in excusing McDonald from service on July 4 was in conformity with the terms of the agreement; that as expressed in rule 8 (a) the condition of business is the determining factor and not whether there was no work or only some of the work which it was necessary to perform but rather the question was whether there was sufficient work to make it necessary to deprive him of a holiday. The carrier further points to the language of rule 8 (a) including the words "as much as" as indicating plainly that the rule applies to one Sunday or holiday regardless of what the condition of business might be on other Sundays or holidays or even for a part of such day, if conditions were such as not to permit of his being excused for the whole day.

The carrier further points to the fact that both the operator and the agent at this station are covered by the working agreement and that if it were possible for one of them to perform the necessary duties of both positions on the Sunday and the holiday the other should be excused.

OPINION OF THE BOARD.—The issue in this matter is clear. It is whether or not Rule 8 (a), read in conjunction and in light of Rule 10 allows the carrier to relieve a man on a legal holiday even though the employe did not wish to be relieved. Rule 8 (a) provides:

"Employes will be excused from Sunday or Holiday duties as much as the condition of business will permit."

The pertinent portion of Rule 10 reads:

"Regularly assigned employes will receive one day's pay within each twenty-four hours according to location occupied or to which entitled if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays."

The determination of the issue in this case depends to a large extent on meaning of the phrase "as much as the condition of business will permit," which is contained in rule 8 (a).

The employees claim that the phrase means that when there is no business and no work to perform the carrier can in that event, and only in that event, dismiss the employee from work on a Sunday or holiday.

The carrier on the other hand contends that whenever work is light and the duties of one man on a legal holiday can be assumed by another regularly assigned in conjunction with his other duties that "the condition of business" is such as to authorize relieving the employee on a legal holiday.

In our opinion the carrier's version of the interpretation of the phrase, "as much as the condition of business will permit" is the correct one. It seems reasonable to state that the condition of business will permit the relieving of employees on legal holidays whenever the duties of such employees are light and can be assumed by others who cannot be relieved because of the nature of their duties. On the other hand it does not seem reasonable that the phrase was incorporated into this rule merely for the purpose of allowing the relief of employees on holidays only when there were absolutely no duties with reference to their particular positions.

Rule 8 (a) read also in conjunction with Rule 10 seems clearly to be intended to allow to the employees as much time off on legal holidays as it is possible so to do. It is quite apparent that rule 8 (a) imposes a requirement upon the carrier of following a policy of relieving employees on holidays whenever it can be done without disrupting the condition of business. The rule then imposes a duty upon the carrier and necessarily must also grant to the carrier the authority of acting under this rule to carry out the policy which it is intended to provide. In our opinion the authority to relieve the employee on a holiday is indispensable to the carrying out of the policy embodied in rule 8 (a) and that this authority exists regardless of whether particular individual employees might in some cases rather work on legal holidays than to be relieved. The rule is a rule obtained for the benefit of the employees as a whole. Obviously such a rule cannot be carried out in practice if in some individual case the matter of relieving the employee on a legal holiday is left to the will and whim of the employee.

In this case there is no question that there were some duties to be performed on the July 4th, in question. However, there seems to be little doubt that these duties could easily be handled by the regularly assigned agent.

It is our conclusion that as these duties could be handled by the regularly assigned agent "the condition of business" clearly would permit the relieving of G. O. McDonald, the employee involved in this case, and therefore, McDonald has no claim for compensation for the day on which he was relieved.

The interpretation we have placed upon Rule 8 (a) and Rule 10, is in our opinion, consistent with the spirit as well as the letter of the agreement and with General Order No. 27 issued by the United States Railroad Administration, December 28, 1918, and the interpretation, No. 4, made thereon by the United States Railroad Administration April 30, 1919. It is also in accord with decisions Nos. 383 and 2648 of the United States Railroad Labor Board and with the language contained in Award No. 109 of the National Railroad Adjustment Board, Third Division.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively, carrier and employee 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 notice to McDonald at 12:40 p. m. on July 3 that he would not work his position on July 4, did not change the starting time of the position and was not therefore a violation of Rule 7 (a). The assignment of the agent to perform such work as was necessary on McDonald's truck on July 4, in addition to the duties of his own position was not in violation of rule 8 (a) or 10 (a).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1937.