

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway Company that (a) the Carrier violated provisions of the Telegraphers' Agreement when it suspended a printer-clerk position at Richmond, California, each Monday during the period July 20, 1941, to December 9, 1941, inclusive, and (b) in consequence thereof the employe or employes occupying said position be allowed eight (8) hours' pay at pro rata rate of the position for each such day so suspended.

EMPLOYES' STATEMENT OF FACTS: Copies of an Agreement, bearing effective date of December 1, 1938, between the parties to this dispute are on file with the National Railroad Adjustment Board.

Effective on or about July 20, 1941 the Carrier established a printer-operator position at Richmond, California, assigned hours 12:00 midnight to 8:00 A. M., six days per week exclusive of holidays, rate of pay 68¢ per hour.

Each Monday from on or about July 20, 1941 to December 9, 1941 the employe occupying said position was suspended therefrom. Effective December 9, 1941 the assignment was changed to 9:00 P. M. to 5:00 A. M., six days per week, exclusive of Sundays and holidays, not working 9:00 P. M. Sunday to 5:00 A. M. Monday.

POSITION OF EMPLOYES: Richmond, California is located on the Carrier's Valley Division. Valley Division Bulletin No. 20 dated July 7, 1941, over the signature of G. W. Simpson, Superintendent, reads in part:

"The following position hereby advertised and bids will be accepted in the office of the undersigned up to 8:00 A. M., July 15th, 1941:

Position 320½—Printer Clerk—Richmond

Hours 12 Midnight to 8:00 AM

Rate .68¢ per hour

Assigned 6 days per week, exclusive of holidays

Successful applicant should be fully conversant with handling of teletype

Probable duration to Dec. 31st, 1941"

If Article III-(d) and Article XVII-(a) of the Schedule supported the claim in this Docket, there would be no need for the Organization to inject Award No. 7 into the proceedings to bolster a claim that a Monday assignment to be one must be started not later than 11:00 P. M. on Sunday and that a Saturday assignment to avoid being a Sunday assignment must be started not later than 11:00 P. M. Saturday. That the claim finds no support in the rules of the Schedule is tacitly admitted by the Organization. In the words of the Board in its Findings in Award No. 7 "The Award relied upon by the employees has no application to agreement between the parties to this dispute."

OPINION OF BOARD: Petitioner claims a violation of Rule 17 (a), in that the claimant was not permitted to work on Mondays during the period from July 20 to December 9, 1941, on a position which had been bulletined as being for the hours "12:00 midnight to 8:00 A. M. * * * 6 days per week, exclusive of holidays." The claimant worked these hours six days a week but did no work during the calendar day on Mondays.

The Carrier contends that the day worked beginning at 12:00 midnight Monday and ending at 8:00 A. M. on Tuesday constituted Monday work. It bases this contention on the statement that the time of the beginning of the first shift in continuously operated telegraph offices signifies the beginning of the railroad day; and that in the office here in question, the time for the beginning of the first shift was 8:00 A. M., and the claimant worked the same hours as the third trick telegrapher. We do not believe the Carrier would want to carry this contention to the extent of saying that a man called to do work in this office from 6:00 A. M. to 8:00 A. M. on Sunday was working on Saturday.

If we consider the ordinary meaning of the words used in this Rule, the intent of the Rule seems clear. To arrive at the interpretation claimed by the Carrier, we must find a different meaning arising from the customary use of these words in the business and agreements of railroad men; a use so common that all railroad men would understand it.

So far as the record discloses, we are of the opinion that when speaking of the work which continues through portions of two calendar days, railroad men speak of it as work of the day on which it started. This opinion finds support also in Awards numbered 7, 398 and 1817. Here the work in question did not start on Monday. It was all done within the calendar day of Tuesday and cannot be considered, for the purpose of this Rule, as work done on Monday.

The Carrier cites Decision No. 1242 of the Railway Labor Board and Award No. 121 of this Division as being in support of its contention. Decision No. 1242 was decided October 6, 1922, before the Rule in question was promulgated. Award No. 121 shows the submission of the case withdrawn "without prejudice to the principle involved."

The first claim shown by the record to have been presented to the Carrier on this matter is the letter from Miller to Simpson, dated November 28, 1941. The claim covers the period from July 20, 1941, to December 9, 1941. Carrier cites Article V (i) which restricts this claim "to a period commencing not earlier than thirty (30) days prior to the date so presented." This claimant cannot be permitted to recover payment for those Mondays which were thirty days prior to November 28, 1941.

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 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 Carrier violated Article XVII (a) of the Agreement. The petitioner, on November 28, 1941, first presented the claim for the time lost because of said violation.

AWARD

The claim is sustained with payments restricted as provided in Article V (i) of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.