

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS—SAN FRANCISCO RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the St. Louis-San Francisco Railway Company, that F. M. Wilhelm shall be compensated at the time and one-half rate for eight hours' work performed on his assigned rest day, Monday, March 4, 1946, at Fayetteville, Arkansas.

JOINT STATEMENT OF FACTS: Telegrapher F. M. Wilhelm was a regularly assigned occupant of a seven-day position at Fayetteville, Ark., with assigned hours from 11:00 P.M. to 7:00 A.M.

Superintendent's instructions issued February 26, 1946, provided that the rest day of this position would not be incorporated into a regular relief assignment, but was scheduled to be worked by an extra employee if available. Extra relief telegrapher was available and was instructed to protect the rest day of the position beginning at 11:00 P.M. Monday, March 4, 1946. Mr. Wilhelm also reported for service 11:00 P.M. Monday, March 4, 1946, claiming that he failed to receive notice that an extra relief employee would be available.

The extra telegrapher was paid for the day and compensation denied Mr. Wilhelm.

POSITION OF EMPLOYEES: As set forth in the Statement of Facts, this claim is predicated on the Carrier's action in declining to pay Telegrapher F. M. Wilhelm for services performed on March 4, 1946, on which date he was alleged to have been granted a rest day to be worked by an extra employee.

The principals to this dispute are parties to a Mediation Agreement designated as the Rest Day Rule entered into July 13, 1945, effective from March 1, 1945. Section 1 (b), second paragraph, provides:

"Where it is not practicable, because of number of rest days involved or because of location of positions, to cover all rest days on a seniority district by establishment of regular relief assignments of six (6) days, work on rest days not covered by such assignments may be performed by qualified extra men if available, who will be paid pro rata rates therefor."

Due to the shortage of telegraphers, no relief positions or assignments were created on the seniority district here involved until the issuance of the following letter by the Superintendent of the Division:

26th designated Monday of each week as the assigned rest day of third trick telegrapher position at Fayetteville, effective as of March 1, 1946. On and after that date Telegrapher Wilhelm was not assigned to work on the rest day of his position and under the agreement rule, above quoted, he was not expected to be available on such days unless notified before expiration of his assigned hours on the day previous.

It is an undisputed fact that no notification was given Telegrapher Wilhelm prior to going off duty at 7:00 A.M., March 4, 1946, that he would be required to work his assigned rest day beginning at 11:00 P.M., Monday, March 4, 1946, and for all intents and purposes he was officially released for his assigned rest day when he completed his previous tour of duty.

Therefore, the employees' contention in this dispute is diametrically opposite to the Schedule Rule requiring that the employee will not be expected to be available on his assigned rest day unless notified before expiration of his assigned hours on the day previous.

The Carrier reiterates that under notice given on assignment of rest days and advice such days would be protected by extra man, it was the responsibility of the Carrier to have the extra man there, or if one was not available to notify the regular man to work. The claim is wholly without merit and is not supported by agreement rules.

OPINION OF BOARD: After the parties had entered into the Mediation Agreement of July 13, 1945, covering rest days, the Carrier, on Feb. 14, 1946, through E. P. Olson, Division Superintendent at Fort Smith, Arkansas, sent out the following letter:

"Fort Smith, Ark., February 26, 1946
835-1

Agents—Wister
Fayetteville
Seligman

Effective March 1st, rest day assignment will be as follows for the positions mentioned:

Agent Wister—Sundays
3d Trk. Operator Fayetteville, 11P M Mondays
2nd Trk. Operator Seligman, 4 PM Wednesdays
2nd Trk. Operator Fayetteville, 4 PM Thursdays.

This will enable extra man moving back and forth to these positions as follows when not otherwise engaged: (Emphasis supplied).

No. 706 Wister to Fayetteville, Monday
No. 706 Fayetteville to Seligman, Tuesday
No. 705 Seligman to Fayetteville, Thursday
No. 705 Fayetteville to Wister, Saturday

Agents should understand that at the points designated where the employee works their rest day will receive time and one-half for that day. Should be particular to show the word 'extra' immediately to the left of the employee's account number in the column providing for distribution on payroll form CT-13-Std-Revised, for extra employees who perform work on the days referred to.

No relief position will be established and instead relief will be taken care of by the telegrapher's extra board.

E. P. Olson

b-1
cc—W. I. Christopher
C. E. Blair
O. E. Hays
G. L. Presson
J. Dalton
JKJ FEB"

F. M. Wilhelm, third trick operator at Fayetteville, became familiar with this letter sometime before Monday, March 4th. Presumably because of the qualification in the order—"when not otherwise engaged"—he, on the mornin' of March 4th asked his superior, the agent at Fayetteville, whether he should come to work that night. The agent is alleged by the organization (and the testimony is uncontroverted) to have advised Wilhelm "that in his mind the superintendent's letter was not definite enough to justify Mr. Wilhelm's failure to report for duty that night."

The relief operator did show up, however. So did Wilhelm. The organization now claims time and one-half for the night's work for Wilhelm in accordance with the agreement between the parties.

We agree with the organization. Had Wilhelm been scheduled for a day (or night) off, he should have been advised before he left work the previous trick. Instead he was advised to the contrary by his superior, the station agent.

The Carrier stated that the second trick telegrapher had called Wilhelm's home at about 7:30 the night of March 4th to inform Wilhelm that the relief operator had arrived. Wilhelm was asleep and his wife took the message. The organization contends this call did not constitute proper notice under the agreement, and we agree.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier violated the Agreement. .

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.