

Award No. 4167
Docket No. TE-4279

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company, (1) That Telegrapher, H. E. Ames is entitled to eight (8) hours compensation at the time and one-half rate for services performed on June 8, 1947.

JOINT STATEMENT OF FACTS: Claimant Ames is the regular assigned occupant of a position at Durango, Colorado with week day assigned hours 7:45 A. M. to 4:45 P. M., exclusive of meal period and a Sunday assignment 9:45 A. M. to 11:45 A. M. Sunday, June 8, 1947, claimant Ames worked his regular assignment 9:45 A. M. to 11:45 A. M. and was recalled to duty at 2:25 P. M. working until 2:35 P. M.

POSITION OF EMPLOYES: This claim is predicated on Mediation Agreement A-2070 signed at Chicago, Illinois July 13, 1945, and now incorporated into the Telegraphers' Agreement on this property effective June 1, 1946, as Rule No. 6—SUNDAY, HOLIDAY and REST DAY, a copy of which is on file with your Honorable Board.

We believe our claim is fully supported by that portion of Section 2 of the Rest Day Rule reading as follows:

"When a position is regularly required to work three hours or less on Sundays and the specified holidays within the hours of the regular week day assignment, but is occasionally required to work more than three hours on such days, the employe occupying such position shall be paid at the rate of time and one-half on the minute basis up to four consecutive hours, and if worked in excess of four consecutive hours within the hours of the regular week day assignment, the employe shall be paid eight hours at the rate of time and one-half."

As you will observe from the statement of facts Mr. Ames worked a call from 9:45 A. M. to 11:45 A. M. Sunday June 8, 1947, and in addition thereto he also worked another call beginning at 2:35 P. M. which is a spread of more than four hours from the time he first went on duty until the time that he was recalled for service.

In the first place this rule is generally known throughout the United States as a "REST DAY RULE". It was, of course, provided for the purpose of affording a day of rest to employes who had theretofore been required

Carrier cannot agree with your interpretation of the third paragraph, Section 2, Rule 6. On the date in question Operator Ames was on duty from 9:45 A. M. to 11:45 A. M., and from 2:25 P. M. to 2:35 P. M., and cannot agree that this service constituted work in excess of **four consecutive hours**. The word 'consecutive' is defined by Webster as 'following in regular order; having no interval or break.'"

Then on November 25, 1947, the Organization wrote the Carrier:

"Replying to your letter November 18, 1947, file TE-25-1947 in connection with the claim of H. E. Ames, Operator Durango.

It is our understanding that the Negotiating Committee of the Rest Day Rule was agreed that where work was performed on the rest day over a period of time in excess of four consecutive hours the employee would be paid 8 hours at time and one-half.

Mr. Ames did perform service on the day in question covering a spread in excess of four consecutive hours although he did not actually work all of that time in the interim. Therefore, it is our contention that he must be allowed 8 hours at time and one half.

Will want to discuss this further with you at our next meeting." To which following reply was made under date of Dec. 24, 1947:

"Your letter Nov. 25, 1947, file C-276, with further reference to claim of Operator H. E. Ames, Durango, Sunday, June 8, 1947, and our discussion of this subject on Dec. 11th.

Carrier cannot agree with your contention in this case, nor can it confirm the statement in the second paragraph of your letter of Nov. 25th.

Claim is again declined."

Claimant Ames, on the date involved, was actually on duty 9:45 A. M. to 11:45 A. M. and again from 2:25 P. M. to 2:35 P. M. From 11:45 A. M. to 2:25 P. M., a period of two hours and forty minutes, he was off duty and performed no service whatever. Manifestly the Organization's contention that Claimant Ames was on duty in excess of four **consecutive** hours is not supported by the facts.

The service performed by Claimant Ames on the Afternoon of Sunday, June 8, 1947, is not a regular requirement but rather is an infrequent occurrence.

The claim is without merit or foundation under the clear and unambiguous working of the rule.

OPINION OF BOARD: This is a joint submission upon a joint statement of facts as follows:

"Claimant Ames is the regular assigned occupant of a position at Durango, Colorado, with week day assigned hours 7:45 A. M. to 4:45 P. M., exclusive of meal period and a Sunday assignment 9:45 A. M. to 11:45 A. M. Sunday, June 8, 1947, claimant Ames worked his regular assignment 9:45 A. M. to 11:45 A. M. and was recalled to duty 2:25 P. M. working until 2:35 P. M."

Both Employees and Carrier rely on the provisions of Rule 6 relating to Sunday, Holiday and Rest Day. This rule became effective on June 1, 1946, and Section 2, paragraph 3, provides:

"When a position is regularly required to work three hours or less on Sundays and the specified holidays within the hours of the regular week day assignment, but occasionally is required to work more than three hours on such days, the employee occupying such position shall be paid at the rate of time and one-half on the minute

basis up to four consecutive hours, and if worked in excess of four consecutive hours within the hours of the regular week day assignment, the employe shall be paid eight hours at the rate of time and one-half."

The Organization relies on this section (above set out) of Rule 6 in support of the claim.

The Carrier relies on the second paragraph of Section 2 of Rule 6 and upon the provisions of Rule 8, designated the "Call Rule."

The second paragraph of Rule 6, Section 2, provides:

"An employe occupying a position required to work on Sundays and the specified holidays less than the hours of his regular week day assignment within the hours of such assignment shall be paid at the rate of time and one-half with a minimum of three hours at the rate of time and one-half for three hours work or less."

and Rule 8, which provides:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

Telegrapher Ames' claim is for eight hours at time and one-half for work performed on Sunday, June 8, 1947.

The question presented involves not only an interpretation of the rules cited but specially an interpretation of what is meant by the phrase used in the third paragraph of Section 2 of Rule 6, that is:

"consecutive hours."

And the question presented, did Claimant Ames work:

"* * * in excess of four consecutive hours"

therefore being entitled to eight hours pay at time and one-half.

The work was performed on the Sunday in question on his regular assignment, 9:45 A. M. to 11:45 A. M., and he was then recalled at 2:25 P. M., and worked to 2:35 P. M. It will be noted that there was a break or an interval of two hours and forty minutes between these two tours of duty.

It would seem to be an erroneous interpretation to construe this to be continuous service to bring the same within the rule provision of constituting "in excess of four consecutive hours".

No definition of the word "consecutive" is found that does not define the same to mean "having no interval or break; continuous; following in regular order, etc."

Therefore, Claimant cannot be said to have worked four consecutive hours under the fact situation presented in this claim in order to come within that part of the rule relied upon in support of his claim.

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 Employes involved in this dispute are respectively carrier and employes 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 there is no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.