

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central Railroad Company, that the Carrier violated Rules 24, 25, and 30 of the prevailing telegraphers' agreement when it required J. V. Holliday, the regular assigned first trick operator-clerk in the dispatcher's office at Vicksburg, Miss., to suspend work on his regular position and relieve ticket agent-operator W. A. Lowery in the ticket office at Vicksburg, Miss., on his rest days on Sundays, March 31 through July 7, 1946, instead of assigning the work of such rest days to a relief position or an extra employe; and

- (a) That J. V. Holliday shall be paid the difference between the rate of his regular position of which he was paid and the rate of the ticket agent-operator position he filled on the Sundays involved, and additionally paid the arbitrary amount of \$2.00 per day as expenses on each of these Sundays, as provided by Rule 30 of the telegraphers' agreement, and
- (b) That ticket agent-operator W. A. Lowery shall be paid at time and one-half for each of the Sundays involved on which he was thus improperly relieved from duty on his Sunday rest days and deprived of this work.

EMPLOYEES' STATEMENT OF FACTS: Ticket Agent-Operator W. A. Lowery is employed at Vicksburg, Mississippi, assigned hours 7:00 A. M. to 3:00 P. M. in the ticket office on the ground or first floor of an office building, on a seven day position. Operator Clerk J. V. Holliday is employed at Vicksburg, Mississippi, assigned hours 7:00 A. M. to 3:00 P. M. in the telegraph office on the second floor of the same building where Lowery is located, on a seven day position.

Lowery worked six days each week, excepting Sunday. Each Sunday March 31, 1946 to July 7, 1946, inclusive; Operator clerk Holliday was required to leave his assigned position, go downstairs and from 7:00 A. M. to 3:00 P. M. occupy the position to which Lowery was assigned.

POSITION OF EMPLOYEES: There is an agreement between the parties effective June 1, 1939 and Memorandum of Agreement No. 1 effective March 13, 1946.

The Memorandum of Agreement No. 1 contains the various rules relating to rest days and the methods to be used in applying such rules.

There is nothing in the foregoing rule or other rules of the existing agreement that provides for payment of time and one-half to an employe on his seventh day when the position works but six days per week with Sunday as the day of rest. Rule 23 merely states that if an employe is required to work on his assigned rest day, he shall be compensated for such service at the rate of time and one-half. It is a managerial prerogative to determine whether such positions should work six or seven days per week.

After Memorandum Agreement No. 1 was consummated effective March 13, 1946, both Ticket Agent-Operator Lowery and Operator-Ticket Clerk Holliday contended for Sunday off. Inasmuch as Ticket Agent-Operator Lowery was the senior of the two men, and the fact that division officers decided that all work on Position No. 83 (Ticket Agent-Operator) except selling tickets, could be dispensed with on Sunday, Mr. Lowery was assigned Sunday as his day of rest. Positions Nos. 84, 85 and 86 (Operator-Ticket Clerks Holliday, Fincher and Strickland) were continued as seven (7) day positions and relief operator-ticket clerks were assigned to relieve Operator-Ticket Clerks Holliday, Fincher and Strickland on their seventh day. Operator-Ticket Clerk Holliday was relieved on Saturday. It is not necessary for the Ticket Agent-Operator to work on Sundays as the work on this position can be deferred until the following day or days.

The claim for the arbitrary amount of \$2.00 per day as expenses for Operator-Ticket Clerk Holliday for walking down one flight of stairs account working in the ticket office is ridiculous as he has been doing this for many years without prior complaint. The organization is simply trying to have the agreement interpreted so as to enhance the earnings of the employes. See First Division Award 11605.

The Carrier asserts that it has conclusively established that the claim in the instant case is entirely without basis, and therefore, should be denied.

OPINION OF BOARD: Ticket Agent-Operator Lowery is employed in the ticket office at Vicksburg, Mississippi, with assigned hours 7:00 A. M. to 3:00 P. M., six days per week, with Sunday as his day of rest. Operator-Clerk Holliday works from 7:00 A. M. to 3:00 P. M., daily excepting Saturday. The ticket office is on the first floor and the telegraph office on the second floor of the same office building. From March 31, 1946 to July 7, 1946, inclusive, Holliday was required to leave his position on Sundays and work Lowery's position.

It cannot be questioned that Holliday was working a seven-day position. We think Lowery's position was also a seven-day position. The fact that Carrier changed Holliday's assigned hours to coincide with the hours of Lowery's position immediately before requiring Holliday to perform Lowery's work on Sunday is strong evidence of the fact that Lowery's position was a seven-day one. It falls within the provisions of Article 8, Rule 21, current Agreement, which provides:

"When a position is regularly required to work more than three (3) hours on Sundays and the specified holidays within the hours of the regular week day assignment, or two (2) or more tours of duty within the hours of the regular week day assignment, the position shall be considered in the same category as a full-time seven-day position and shall be subject to the provisions of Article 9."

The Organization contends that Holliday is entitled to be paid the rate of the Ticket Agent-Operator position and \$2.00 per day as expenses as required by Article 10, Rule 30, current Agreement, in being wrongfully required to leave his assigned position to work the rest day of the Ticket Agent-Operator's position. In this connection, the Carrier was obliged by the applicable Agreement to assign the rest day to a regularly assigned relief man, or, if a relief man was not available, to an extra man, or, if an extra man was not available, to the regular occupant of the position on an overtime basis.

The Agreement does not permit the taking of an employe off of a seven-day position to work the rest day of another seven-day position. This would amount to the blanking of one day of a seven-day assignment. Claimant Holliday will be paid the rate of the Ticket Agent-Operator's position on the Sundays worked. The claim for \$2.00 per day expenses is denied for the reason that Holliday was not required to leave his regular assigned station on the days for which claim is made, a condition precedent to recovery under the rule. Awards 815, 911.

The claim of the Ticket Agent-Operator is valid. He was entitled to perform the Sunday work for which claim is made. The rate for such Sunday work is time and one-half the assigned rate. Article 9, Rule 23, Memorandum Agreement No. 1, effective December 1, 1945. See also Award 3979.

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 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 the Agreement was violated to the extent shown by the Opinion.

AWARD

Claim (a) sustained in part. Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.