

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-Southwestern Railway Lines, that W. A. McDowell is entitled to and shall be paid for eight (8) hours at time and one-half rate for Sunday, September 21, 1947, account being required to suspend work on that day in order to be transferred from the position of second trick clerk-telegrapher at Sulphur Springs, Texas, to the position of agent-telegrapher at Saltillo, Texas, to which he had been assigned by bulletin.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date December 1, 1934, as to rates of pay and rules of working conditions, supplemented by the Rest Day Rule, or Mediation Agreement A-2070, effective March 1, 1945, is in effect between the parties to this dispute.

W. A. McDowell, the claimant, while regularly assigned to the second trick telegrapher position at Sulphur Springs, Texas, hours 6:30 P.M. to 2:30 A.M., on which he was required to work seven days each week, bid for and was awarded the position of agent-telegrapher at Saltillo, Texas, hours 8:00 A.M. to 5:00 P.M., a six day position with no Sunday assignment.

In transferring McDowell from the Sulphur Springs position to accept the bulletined position at Saltillo which had been awarded him, he was required to suspend work at Sulphur Springs on Sunday, September 21, 1947, in order to be checked in on the position of agent-telegrapher at Saltillo on Monday, September 22, 1947. Had McDowell not been suspended from work during his regular hours on Sunday, September 21, 1947, he would have been paid at the rate of time and one-half for this day in accordance with the Memorandum of Understanding, dated Chicago, Illinois, September 12, 1945, on the application of Sections 1 and 2 of Article 1 of the Rest Day Rule.

Claim in behalf of McDowell for a day's pay at time and one-half for the day of Sunday, September 21, 1947, on which he was not permitted to work, was declined by the Carrier.

POSITION OF EMPLOYES: The following quoted Article 17-2 of the telegraphers' agreement and the mutually agreed upon interpretation of its

for another penalty on the basis that it cannot make the transfer when an off day or rest day is involved.

The rules are plain, and as pointed out above, they do not support the claim. Therefore, the Carrier respectfully requests that it be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Claimant was for some time the regularly assigned second-trick clerk-stenographer at Sulphur Springs, Texas, with hours from 6:30 P. M. to 2:30 A. M. The position had been filled by bulletin as one for "seven days per week until relief can be arranged." In the absence of regularly assigned rest days, Sundays were automatically treated as such, and the Claimant was compensated at the time and one-half rate for service on those days.

On September 12, 1947, Carrier bulletined the six day position of agent-telegrapher at Saltillo, Texas, (16 miles from Sulphur Springs), with hours from 8:00 A. M. to 5:00 P. M. This position was awarded the Claimant and he was instructed to report for duty at 8:00 A. M., Monday, September 22nd. Meanwhile, Claimant had worked as clerk-telegrapher at Sulphur Springs from 6:30 on Saturday, the 20th, until 2:30 A. M. on Sunday, September 21st, whereupon he was relieved from further service at that point. On September 19th Carrier's Chief Dispatcher had directed the Claimant to transfer to Saltillo and take over from Miss Edna Brown on Monday, September 22nd. On the same day L. D. Bowman was directed to protect the second-trick position at Sulphur Springs on Sunday and Monday, September 21st and 22nd, and Miss Brown was designated to take over that position, beginning Tuesday, September 23rd.

The claim is for eight hours for Sunday, September 21, 1947, at the time and one-half rate. The Organization contends that under the circumstances this Sunday was a part of the Claimant's regular assignment at Sulphur Springs and that he could not be deprived of work, or pay for work, on that day, in order that he might be made available at Saltillo on the next day without violating the Hours of Service Law.

There can be no doubt but that the Carrier had the right during the time the Claimant served at Sulphur Springs to have established a regular relief position for the purpose of effectuating the rest day provisions of the Rules. This was never done, however, and we cannot accept the Carrier's contention that its act in relieving the Claimant at the end of his assignment which began on 6:30 P. M. on Saturday, September 20th, was to provide him a rest period on Sunday, the 21st. It appears clear to us that the assignment of Bowman to Sulphur Springs for Sunday and Monday, September 21st and 22nd, was for the purpose of making the Claimant available for work at Saltillo on Monday, September 22nd, without violating the Hours of Service Act, rather than to provide Claimant with a day of rest on Sunday. This is disclosed by the fact that Bowman not only relieved the Claimant at Sulphur Springs on Sunday, September 21st, the Claimant's rest day, but also on Monday, September 22nd, and that Miss Brown, who was succeeded by the Claimant at Saltillo, likewise succeeded to the Sulphur Springs position, beginning on Tuesday, September 23rd.

Without regard to the question as to whether the Carrier had the right to relieve the Claimant on Sunday, September 21, so as to provide him with his day of rest, we must conclude that what was actually done was to hold him out of service on that day so that he could be made available for work on the following day without violating the Hours of Service Act.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.