

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, 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 Company that the Carrier shall now be required to compensate Telegrapher T. E. O'Brien at the rate of time and one-half, instead of pro rata rate at which he was paid, for the eight (8) hours' service he performed while relieving the regularly assigned third trick clerk-telegrapher at Ilmo, Missouri, on Thursday, February 26, 1948, the assigned rest day for the employee occupying this position, in accordance with the provisions of Mediation Agreement A-2070.

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

Extra Telegrapher T. E. O'Brien (Claimant) was instructed by proper authority to relieve the regularly assigned third trick telegrapher at Ilmo, Missouri, commencing at 11:55 P. M., Thursday, February 26, 1948, which was the assigned rest day on that position. The regularly assigned third trick telegrapher at Ilmo was being used as extra train dispatcher. Telegrapher O'Brien continued to work the third trick position at Ilmo for approximately sixty days.

A regularly assigned rest day relief telegrapher is assigned to perform rest day relief work on the three positions at Ilmo and on the three positions at Rockview, Missouri. Due to the shortage of extra telegraphers, however, the regularly assigned rest day relief telegrapher was being used to perform relief (extra) work on 1st trick Ilmo. As a result of the regularly assigned rest day relief telegrapher being used to perform extra work on first trick Ilmo, all employees at Ilmo and Rockview were required to work seven (7) days per week and all were paid the time and one-half rate for working the assigned rest days of their positions except Telegrapher O'Brien for services rendered on Thursday, February 26, 1948 while relieving on third trick at Ilmo.

Telegrapher O'Brien filed a claim for the time and one-half rate for the work he performed on Thursday, February 26, 1948, the assigned rest day on the third trick clerk-telegrapher position at Ilmo. The claim was declined by the carrier.

OPINION OF BOARD: The Claimant T. E. O'Brien, an extra Telegrapher was instructed to report at Illmo, Mo. and relieve the regularly assigned third trick telegrapher on Thursday, February 26, 1948. These instructions were complied with and claimant continued to work this position for approximately sixty days. Thursday was the regularly assigned rest day of the position, and a regularly assigned relief employee was assigned to work the position each rest day, but on the day in question the regular relief employee was being used on another position. Claimant was paid pro rata rate for his work on Thursday, February 26, 1948, the claim is that he should have been paid time and one-half on the theory that the regularly assigned employee would have received that rate for working that date.

The question here involves the interpretation of the Rest Day Rule, Section 1 (a), (b) and (i) of the Mediation Agreement. These Sections of the Agreement state that one rest day in seven be assigned on seven day positions, and that the employee occupying the position be relieved without pay on the rest day. The relief for such position should be a regularly assigned relief employee, or an extra employee, to be compensated at pro rata rate of pay. If the regular occupant of the position be required to work on his regularly assigned rest day he shall be compensated at the time and one-half rate.

When the claimant was assigned to the position in question he had no assurance of the length of his duties there, he may have worked for one day, or continued as he did for approximately sixty days. There is no dispute to the fact that claimant was an extra employee without any regular assignment when assigned to the position at Illmo. Thursday, February 26, 1948, the date of the claim was his first day on the position, and since he was the senior extra employee available, he had the right to work the position. He could not have the conflicting right to be relieved on the same day. There was a regularly assigned relief employee to work on this date, and if he had worked he would have been paid in accordance with Section 1 (b) the pro rata rate. From the facts before us it is evident that claimant was working in place of the regular relief employee, and not in the place of the regular employee who was to be relieved on that day.

The issues involved in this case have been passed upon by this Board in Award No. 4271, which involved the same parties and the same agreement. In that case there was a claim for time and one-half rate on the first day the extra telegrapher worked on a position when that day coincided with the rest day of the position. There the Board said: We find nothing in the Rules, however, that entitles an extra man, temporarily filling a regular assignment, to more than the pro rata rate, be the day on which he works a Sunday or another day".

The Employees in this case argue that due to the length of time claimant remained at the position in question, it is a factual situation requiring a finding that he was relieving the regular employee on the position, and acquired all the rights including the pay at time and one-half rate for working the day in question. Since the day in question was the first day claimant worked the position, we cannot agree that his ultimate length of tenure thereon would, effect his rights on the first day, which is the only day upon which claim is here made. Award No. 4257 has been cited in behalf of claimant, however, the Board is of the opinion that the facts in the instant case distinguish it from the findings in that award. It follows that this claim will be denied.

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 oral hearing thereon;

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 Agreement was not violated.

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 February, 1950.