

Award No. 4775

Docket No. TE-4576

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisiana and Arkansas Railway Company.

1. That Telegrapher A. J. Blanchard, New Orleans, Louisiana with a weekday assignment of hours 8:00 A.M. to 4:00 P.M. and no Sunday assignment, should have been used to perform the service required by the Carrier subsequent to 8:00 A.M. on Sundays, June 6, 13 and 20, 1943, which service was performed by another telegrapher within the hours of the regular weekday assignment of Telegrapher A. J. Blanchard; and,

2. That the Carrier, as a result of its failure to call Telegrapher A. J. Blanchard to perform the service it required at New Orleans, La., subsequent to 8:00 A.M. on Sundays, June 6, 13 and 20, 1948, shall compensate the claimant on the basis of 3 hours at the time and one-half rate of pay for each Sunday as provided by Mediation Agreement Case A-2070.

EMPLOYES' STATEMENT OF FACTS: Prior to February, 1946, the first trick telegrapher position at New Orleans, occupied by claimant, required a Sunday assignment of the regular weekday hours.

Carrier's Bulletin No. 22 of February 11, 1946, abolished the position of first trick telegrapher at New Orleans on Sundays. Bulletin No. 40 issued by the Carrier on March 15, 1946, cancelled Bulletin No. 22 of March 11, 1946, which had the effect of restoring the first trick telegrapher position at New Orleans to the status of a seven-day position. Shortly thereafter or in approximately one week subsequent to March 15, 1946, the Carrier by telegram cancelled its Bulletin No. 40 of March 15, 1946, and again placed the first trick telegrapher position at New Orleans in the category of a six-day position with no Sunday assignment for that position.

On Sundays, June 6, 13 and 20, 1948, the Carrier required telegraph service on the first trick telegrapher position at New Orleans between the hours of 8:00 A.M. and 9:00 A.M. on each of those dates. The service so required was within the regular week day assignment of the claimant herein. The Carrier instead of calling the claimant to perform service it required on Sundays, June 6, 13 and 20, 1948, between 8:00 and 9:00 A.M., and within the regular weekly assignment of the claimant, permitted and/or required the third trick telegrapher at New Orleans whose regular weekday assignment ended at 8:00 A.M. to perform such service.

POSITION OF EMPLOYES: An agreement bearing date of July 1, 1942 and Mediation Agreement, Case A-2070 of March 1, 1945, is in effect between the parties to this dispute, and contains the following rules:

to leave the job. This overtime was worked continuous with his regular assignment.

Claim was filed for a "call" (3 hours pay at time and one-half) for A. J. Blanchard, first trick operator, whose job did not work on Sundays.

POSITION OF CARRIER: The first trick telegrapher's job was not needed on Sunday, and it was, therefore, on a six-day assignment with Sunday as the day of rest, for a period of about 2½ years.

For years the Telegraphers' Organization did everything possible to secure a "rest" day for their membership. This program was worked out piecemeal, securing such rules as our 7-7 (quoted above), where possible, until they finally secured the National Rest Day Agreement effective March 1, 1945.

Their arguments for the "rest" day were that Telegraphers had no time for their families, for recreation, to attend Church, and many others, some of which were reasonable, and some were not; however, they finally secured the "Rest Day" agreement, providing for one day off duty each week, with penalty payment if not given such day off duty.

Regardless of all their arguments in support of their desire for a day of rest for each telegrapher, they here file claim for a penalty payment to A. J. Blanchard—not because he was required to work on his rest day, thereby disturbing his rest, for which, if done, we are required to pay a penalty—but because he was not called upon to work and thereby disturb his rest.

This is not a case where someone outside the scope of the Telegraphers' Agreement performed work of a telegrapher and thereby took away from the telegraphers work to which they are entitled. It is merely a case where another telegrapher was required to work a few minutes over and beyond his tour of duty and was paid therefor at penalty rate. We are called upon to pay a three-hour additional penalty for not disturbing Blanchard's rest.

Claim should be denied, and we request the Board to so find.
(Exhibits not reproduced).

OPINION OF BOARD: Claimant was first trick telegrapher with hours 8:00 A.M. to 4:00 P.M., a six-day position, with no Sunday assignment. On three Sunday mornings, Carrier required the third trick telegrapher, whose regular assignment ended at 8:00 A.M., to stay on duty for one hour, as it says, to copy messages, reports and train orders which were in process of transmission at the time his tour of duty ended. For that overtime work the third trick telegrapher was paid at overtime rate.

Claim was filed for a call in behalf of claimant, the first trick operator, for each occasion of such work within the hours of his trick on the ground that on six-day positions any work arising on the seventh day within the hours of his position belong to the occupant just the same as that arising on any other day under the Rest Day Rule. Carrier, on the contrary, urges Rule 7-7 that "Employees will be excused from Sunday and holiday duties as much as conditions will permit" and insists there is nothing in the Agreement to require use of the occupant of the first trick position for Sunday work, quoting Section 1 (i) of the Rest Day Rule, reading: "While it is the intent of this Agreement that, were practicable, employees will be relieved on their rest days, it is understood that an employee can be required to work on his rest day, subject to the rules herein set forth with respect to pay for work performed on such rest day," and insists that the occupant of the position is entitled to work and pay on the seventh day only when required to work thereon.

The general terms of Rule 7-7 are controlled by the specific provisions of the Rest Day Rule. Section 1 of that rule is not applicable here for the reason that it applies only to seven-day positions. Section 1 contains specific provisions as to performance of the work on the rest day: by regular relief

assignments, where practicable; if not, then by qualified extra men, if available, and if none such, then by the employe occupying the position. But in Section 2, which controls six-day positions, such as that now before us, there are no provisions for performance of the duties by others than the employe occupying the position.

The wording of the pertinent paragraph of the rule is: "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." It will be noted that the rule covers not merely "An employe * * * required to work on Sundays," but "An employe occupying a position required to work on Sundays." In the case before us the hours from 8:00 A.M. to 4:00 P.M. belonged to the first trick telegrapher's position. The work of the third trick operator during those hours was work of that position and thereby the position was required to work on Sunday and the employe occupying that position was entitled to be compensated under the rule.

Carrier further urges that the work here involved was work in process of transmission at the time the third trick telegrapher's trick ended and he was required to remain on duty until he was "cleared" to leave the job and that this overtime was work continuous with his regular assignment. The fact that the work was continuous with that of the prior trick makes it no less a violation of the rule, and the fact that the third trick telegrapher was required to work for an hour after the end of his tour of duty, evidences that there was substantial work remaining to be done within the hours of the first trick assignment and its performance in the absence of the first trick employe was not overtime but work of that trick.

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 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 claimant was entitled to perform the Sunday requirements of the position to which he was assigned.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.