

Award No. 5180
Docket No. TE-5123

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Texas & Pacific Railway Company, that Telegrapher J. T. Molaison is entitled to 8 hours pay at the rate of time and one-half for January 2, 1948, his regular assigned relief day, on account of being held for service and not used.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing the date of May 1, 1939 and Rest Day Rule effective March 1, 1945 are in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

J. T. Molaison's regular assigned position is third trick operator at Addis, Louisiana. Mr. Molaison's regular assigned hours are from 12:00 M. N. to 8:00 A. M., daily except Friday which is his regular rest day.

Monday, December 29, 1947, Molaison, along with the other telegraphers in that office, received instructions as follows:

"30-32 WH CS Alexandria, 12-29-47

Operator Addis:

On account of Wisemier sick and unable to work operators at Donaldsonville and Addis arrange to work their rest days until other arrangements can be made for relief operator. Mrs. Wisemier advise soon as possible when looks like will be able to return to work. RAH-1043 P. M."

Thursday, January 1, 1948, following telegram was received at Addis:
"7-11 Alexandria 11:03 A. M. January 1, 1948

JED, Booksh, Lucas, Molaison, D. H. Ducote—Addis:

Operator D H Ducote will cut in on swing job Addis-Donaldsonville and protect third trick Addis 12:01 A. M. Friday Morning in place of Molaison and will go to Donaldsonville early A. M. break in and cut in on swing Donaldsonville tomorrow night third trick. Joint all. J. G. Tucker. 11:55 A. M."

Claimant Molaison did not learn of this latter telegram until reporting for work at 11:55 P. M. January 1, 1948.

Exhibit "D", attached, is copy of Director of Personnel James' letter of October 27, 1948, declining the claim.

Would call particular attention to the next to last paragraph of Exhibit "D" (letter to Mr. Canafax) wherein it is stated:

"It is my understanding that you advised in conference that Operator Molaison was not at home and that he showed up at the station at 11:55 P. M., which is the basis of your claim. You do not base the claim on any rule nor is there any which would support the claim or be a basis for compensating Mr. Molaison."

The last paragraph of Exhibit "D" reads:

"Since every reasonable effort was made to notify Operator Molaison, this claim must be declined."

We submit that the claim herein is wholly unfounded and without merit, and respectfully request that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held a position as Third Trick Operator at Addis, Louisiana, hours 12:00 midnight to 8:00 A. M. daily except Friday which was his regularly assigned rest day. Due to illness of the regularly assigned relief operator, the Chief Dispatcher, on December 29, 1947, notified the operators at Addis to work their regular rest day until other arrangements could be made for a relief operator. Subsequently, and on Thursday, January 1, 1948, a qualified relief operator was obtained and notice sent to Addis. This was received at 11:55 A. M. The claimant was away from home during the day (New Years) and attempts to notify him not to report for work on his rest day were unsuccessful. He reported for duty at 11:55 P. M. and was told that the relief operator was available. He did not work his shift during his rest day, but it was filled by an extra who was qualified for the work. He has now made claim for eight hours at time and one-half on account of not being used on his assigned rest day.

The contention of the Petitioner is that having been told to work his regular rest day, subsequent orders cancelling such requirement did not come within the time required by the provisions of the Rest Day Rule. The Petitioner relies on Article 5 (d) and the Rest Day Rule, pertinent parts of which are quoted in the submissions. The contention of the Carrier is that no rule was violated.

The uncontradicted facts do not show that there was any change in the assigned hours of claimant's position, and we are unable to find, therefore, a violation of Article 5 (d) of the Agreement.

Principal reliance, however, is placed on Section 1 (a) and (i) of the Rest Day Rule as supporting the claim. In order to come within this rule, the Claimant argues that the notice of December 29th to the operators at Addis for them to work their relief days had the effect of abolishing the Claimant's relief day; that the notice of January 1, 1948, that the position would be filled on January 2, 1948, 12:00 midnight to 8:00 A. M., had the effect of assigning to the Claimant a new relief day; and that he did not have 72 hours' notice of such change.

We do not believe that is a realistic application of the facts to the rule. Section 1 (i) provides that "an employe can be required to work on his rest day" when necessary to the service. If he does work the relief day, he shall be paid at overtime rates. But before he is required to perform such work, there must be no regularly assigned relief operator or extra qualified operator available. Under the facts here, when the extra operator became available, such employe had a right to work the position on Claimant's relief day. He did work it, and the Claimant was relieved from working his assigned day of rest. This was in accordance with the contract.

By planning to work his relief day and preparing and making his arrangements so to do, the Claimant was, without doubt, inconvenienced. But this is not the situation where the employe held himself available for a "call" such as were dealt with in Awards 826, 1070, 1675, 3521 and 4440, cited by Petitioner.

Reliance is placed by Petitioner on Award 1247 of this Division. The facts of that case are similar, but in its Opinion the Board said that the language of the rule would support the interpretation placed on it by either the Employes or the Carrier. The Board then followed the interpretation previously applied when the Carrier had allowed a similar claim. There is no record of previous interpretation by the parties to the rule here under consideration.

Petitioner also cites Award 3660 as a precedent which is controlling in this case. While the facts appear parallel, reliance was placed on a provision of the Agreement which provided that employes would not be required to be available on Sundays and certain holidays unless notified before the expiration of their assigned hours. In that case the Claimant was told by his superior to report. The ambiguity of the message from the Superintendent made it impossible for the operator to be certain that the Claimant would not be needed. We believe the case is not in point here.

We have, therefore, concluded that the Agreement has not been violated as alleged.

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 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 11th day of January, 1951.