

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

(1) The Carrier violated the agreement between the parties when on July 15, 1950, it permitted W. J. Nunnally, a regular assigned occupant of the position of third trick telegrapher, Camden, Arkansas, to perform service on the position of second trick telegrapher, Camden, Arkansas, thereby depriving the regular incumbent of said second trick telegrapher position, J. A. Westfall, of work and compensation properly due him.

(2) J. A. Westfall, shall be compensated for 8 hours at the time and one-half rate for July 15, 1950, account being improperly relieved on said date, one of his regular assigned rest days.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute, dated June 1, 1942, amended from time to time.

Claimant J. A. Westfall was the regularly assigned occupant of the second trick telegrapher position at Camden, Arkansas, July 15, 1950. His assigned hours were 2:30 P. M. to 10:30 P. M. His assigned work week was Monday through Sunday, working Monday, Tuesday, Wednesday, Thursday and Friday, with assigned rest days Saturday and Sunday, being relieved on the two rest days by a regular assigned rest day relief employee. On July 15, 1950, account the regular assigned relief employee being absent on leave, the Carrier permitted the regular assigned occupant of the third trick telegrapher position in the office to work the second trick position 2:30 P. M. to 10:30 P. M.

POSITION OF EMPLOYEES: It is the position of the employees that work on rest days of a position such as is here under consideration should be assigned in the first instance to a regularly assigned relief employee if there be such, secondly, to an extra man, then, if an extra man is not available, to the regular occupant of the position on an overtime basis. The rules of the agreement in evidence, and interpretations thereof in numerous awards of your Board fully support this position, as will be shown later. Since the Carrier failed to assign such work to the Claimant, the regular assigned incumbent of the position in question, the agreement was violated.

On July 15, 1950, the regular assigned rest day relief telegrapher was off, having been granted a leave of absence because of sickness of members

relieving an employe on his rest day in accordance with an agreement vigorously sought by his representatives to do so, is not displacing him in any wise and certainly not displacing him from any work to which he has any right under the agreement.

It is the Carrier's opinion that the Employes have not furnished either facts or arguments that would require or permit the payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regular assigned occupant of the Second Trick Telegrapher's position at Camden, Arkansas, assigned 2:30 P.M. to 10:30 P.M. Sunday through Thursday, with Friday and Saturday as rest days. W. J. Nunnally is the Third Trick Telegrapher assigned, 10:30 P.M. to 6:30 A.M. Monday through Friday, with Saturday and Sunday as rest days. M. B. Nunnally was the regularly assigned Relief Operator with Monday and Tuesday as rest days. On Saturday, July 15, 1950, W. J. and M. B. Nunnally were on leave, because of illness in the family, but W. J. Nunnally was used to work the rest day of the Second Trick Telegrapher's position. Claimant, the regularly assigned Second Trick Operator, contends that he was improperly deprived of the work.

The rule is firmly established by a long list of Awards that work on rest days should be assigned in the first instance to the regularly assigned relief man, if there be such; secondly, to an extra man; and if an extra man is not available, to the regular occupant of the position on an overtime basis. Awards 4728, 4815, 5333. The regular occupant of the relief position or an extra man was not available. The work, therefore, belonged to Claimant.

Carrier contends that the day in question was a part of the relief man's assignment and for that reason the stated rule does not apply. The principle is no different since the advent of the forty hour week, there being simply two rest days instead of one. The day involved was a rest day of Claimant's position even though it was a part of the work of a regularly assigned relief man.

The claim will be sustained at the pro rata rate. Awards 5271, 4244.

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.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of September, 1951.