Award No. 6281
Docket No. TE-6212

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway Company that:

1. The Carrier violated the agreement between the parties when it failed to pay E. R. Lacy eight hours at the time and one-half rate on March 17, 1951 and March 18, 1951, the sixth and seventh days of his work week and

2. The Carrier shall now compensate the claimant, Lacy, for the difference between the straight time paid and the time and one-half payment due on the two days referred to in paragraph 1.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated September 1, 1949.

At the time the cause for this complaint arose, the claimant was regularly employed as first telegrapher at Appalachia, Virginia, with assigned hours 7:30 A. M. to 3:30 P. M.

Prior to March 17th, his work week consisted of the seven day period, Monday through Sunday with assigned working days of Monday, Tuesday, Wednesday, Thursday and Friday and with assigned rest days of Saturday and Sunday.

On March 12, 1951, the claimant was advised by the Carrier that effective Saturday, March 17, 1951, his rest days would be changed from Saturday and Sunday to Tuesday and Wednesday.

In his work week beginning Monday, March 12, 1951, claimant worked Monday, Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday, a total of seven days and for the work performed on the sixth and seventh days of that work week the Carrier allowed him straight time, instead of the time and one-half due.

POSITION OF EMPLOYES: It is the position of the employes that the rules of the current agreement require payment at the time and one-half rate for work performed under the circumstance of this case, regardless of whether such work is considered to be "Work in excess of 40 hours", "work on the sixth, or seventh days," or "on rest days"; and that the Carrier's right to change rest days does not carry with it any right to deprive employes of any benefits accruing to them by virtue of the effective and binding rules of the agreement.

In conclusion, the carrier has shown that the entire service performed by claimants was on their assigned work days; that they were not worked more than five days in their work weeks, or on their assigned rest days or the sixth or seventh days of their work weeks; that they were properly compensated for the service performed at the straight time rate of pay in accordance with Rules 4 (i), 4 (k), 6 and 9 (d) of the applicable agreement. Claim for payment at the time and one-half rate for work performed on the days involved is not supported by any rule or provision in the agreement in effect between the parties. Carrier respectfully requests that the Board so hold and that the claim be denied.

All relevant facts and pertinent data used by the carrier in this case have heretofore been made known to the employes' representative.

OPINION OF BOARD: The General Committee contends Carrier should have paid Clerk-Telegrapher E. R. Lacy at time and one-half for eight hours on both March 17 and 18, 1951, they being the sixth and seventh days of his work week. It asks that Carrier be required to do so.

Immediately prior to March 17, 1951, claimant was regularly assigned to and occupied the position of first trick clerk-telegrapher, hours from 7:30 A. M. to 3:30 P. M., at Appalachia, Virginia. It then had a work week of Monday to Friday with Saturday and Sunday as rest days.

Rule 4 (k) of the parties' Agreement provides:

> "Rest days on all regular positions, including regular relief positions, shall be assigned and the employes shall be notified. The rest days shall be the same days of each week but may be changed to meet service requirements by giving not less than seventy-two (72) hours' written notice to the employes affected."

To meet its service requirements, due to a business decline, Carrier found it necessary to change the rest days of this position. By notice dated and issued on March 12, 1951, Carrier changed the rest days of this position from Saturday and Sunday to Tuesday and Wednesday. This change was made effective as of March 17, 1951. There is no question about Carrier's right to make this change. The result thereof was to give the claimant a new work week that is, prior to March 17, 1951, his work week was Monday to Friday with Saturday and Sunday as rest days whereas, on and after March 17, 1951, his work week was Thursday to Monday with Tuesday and Wednesday as rest days. Consequently Saturday and Sunday, March 17 and 18, 1951, were no longer his rest days because the work week of which they were rest days had been cancelled as of March 17, 1951, by the notice of March 12, 1951. In other words, Saturday and Sunday, March 17 and 18, 1951, were work days of his new work week. For comparable results see Awards 5854, 5998 and 6211 of this Division.

Rule 9 (d) provides, in so far as cited, as follows:

> "Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time hourly rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 4 (g).
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> "Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time hourly rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Rule 4 (g)."

It is the Organization's thought that changing claimant's rest days did not create a new assignment and that consequently he does not come within the excepted category of an employe moving from one assignment to another. Of course, before the question of an exception becomes material the situation must exist to which the exception has application.

The quoted language of Rule 9 (d), in so far as overtime is concerned, has application when an employe has worked in excess of forty straight time hours in any work week or when he has worked more than five days in a work week and, in doing so, has worked on either the sixth or seventh days thereof, or both. Since claimant's old work week ended after he had completed his work on March 16, 1951, and since his new work week started on March 17, 1951, he performed no work within the meaning of the foregoing provisions. Consequently there is no situation to which the exceptions could apply and therefore no need exists for discussing whether or not the situation here presented comes within the language thereof.

In view of what we have here said we find the claim to be without merit.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.