

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad for and in behalf of Telegrapher N. B. Dudley, regularly assigned rest day relief telegrapher relieving at Tavares, Leesburg and Wildwood, Florida, that:

- (1) Rule 26, 9, 13 and Section 1, paragraph (e) of Rule 12 were violated by the Carrier when Telegrapher Dudley was denied one day's pay he lost on May 21, 1951, transferring from a position to which he had been diverted to perform extra service, back to his own position, because of the Federal Hours of Service Act.
- (2) Telegrapher Dudley shall now be compensated for eight (8) hours at the rate of his assignment at Leesburg from which suspended on this date.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the Seaboard Air Line Railroad Company and its employees as represented by The Order of Railroad Telegraphers, parties to this dispute bearing effective date of October 1, 1944 and as amended September 1, 1949. This dispute has been progressed in accordance with the Railway Labor Act, and the facts are as follows:

Mr. N. B. Dudley at the time this dispute arose, was the regularly assigned incumbent of a rest day relief position performing relief service on a regular schedule composed of the following assignments.

Agent-Operator Tavares	8:00 A. M. to 4:00 P. M. Saturday
Agent Wildwood	8:00 A. M. to 5:00 P. M. Sunday (1 hr. lunch)
Agent-Operator Leesburg	8:30 A. M. to 5:30 P. M. Monday (1 hr. lunch)
2nd trick Opr Wildwood	3:00 P. M. to 11:00 P. M. Tuesday
2nd trick Opr Wildwood	3:00 P. M. to 11:00 P. M. Wednesday

REST DAYS

Thursday and Friday.

OPINION OF BOARD: The claim involves the alleged loss of one day on Claimant's regular assignment because of operation of the Hours of Service Law.

Claimant is regularly assigned to a rest day relief position which has Thursdays and Fridays as its assigned rest days. By direction of Carrier, he worked a position other than his own on Thursday to Sunday, inclusive. On Monday, May 21, 1951, he could have returned to his own position but for the provisions of the Federal Hours of Service Law. He claims pay for Monday, the day lost. The claim is based on Rule 26, providing:

"Regular assigned employees will not be required to perform relief work except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in regular compensation, shall be paid an amount sufficient to reimburse them for such loss. If any such employee would receive time and one-half rate through the application of Rule 12, on any day such work is performed the time and one-half rate shall apply on that day or days. In all cases such employees will be allowed actual necessary expenses while away from their regular assigned stations."

In determining this claim, the Carrier would have us look to the period Claimant was temporarily assigned off his regular position. During this temporary assignment, he was compelled to work both of his rest days and was compensated therefor at the rate of time and one-half. Thus, for the period his earnings were enhanced over the amount regularly earned upon his regular assignment, Carrier contends, and Rule 26 requires nothing more.

The Organization, on the other hand, urges that neither these two rest days nor payment made for working them has any bearing on the requirements of the rule relating to "regular compensation." In short, they contend that Thursdays and Fridays belonged to Claimant and anything he earned on those days is separate and apart from the compensation he is entitled to receive for the regular work days of his own position.

Board presentation of the dispute to the Referee developed a new argument, based upon the Forty Hour Week Agreement, to the effect that Claimant was entitled only to pro rata rates on the rest days worked. While it is true that the entire Agreement is before us, we do not find it necessary to pass upon this contention in this case as it relates only to the amount of the monetary sum claimed to be in excess of Claimant's "regular compensation" accruing as a result of the relief assignment. Whether he was overpaid or not is not an issue in this case.

Carrier compares what he earned on the relief assignment with what he would have earned on his regular assignment and finding it in a greater sum, contends that the requirements of the Rule have been satisfied. That might well be if we were confronted with a rule phrased as in Award 2511, for example. We there have a rule providing simply that the employees "will be paid the rate of the position they fill but not less than the regular rate." Such a rule might be construed as tying down the comparative period to the period worked in relief. Not so, we find, in this instant case. We must attach some intended meaning to the phrase "and in consequence thereof" which goes beyond, it seems to us, the period of actual relief. It was a consequence of the relief duties performed at the Carrier's request and benefit that Claimant ran afoul of the Hours of Service Law. The result was the loss of one day's work in his succeeding work week and as we construe the Rule in this case, the day should be compensated for. While it is conceded that the Carrier was empowered to use Claimant in relief under Rule 26, the fact remains that Carrier could and should have anticipated the application of the Hours of Service Law. We have recognized in Award 2827 that the Carrier must exercise a high degree of diligence to overcome the effects of said Law. There was no showing made, as in Award 2511, that Claimant was the only man available to be used in this emergency. Neither is this such a case as con-

fronted us in Award 2729, where we found that it was within the control of the employe and not the Carrier to avoid conflict with the Hours of Service Law.

We are not brought in conflict with prior Awards of this Division relating to the Hours of Service Law, finding in such Awards distinguishing factors, a few of which we have noted above. Further, we consider Award 3849 where claim of a telegrapher-clerk-towerman for amount he would have earned as a train dispatcher was denied, the Division finding that by his own free actions the Claimant had placed himself in a position to which the Hours of Service Law applied. Not so in the instant case where the telegrapher could not have refused the relief assignment with immunity. In Award 4975, conflict with the Law arose over the employe's free use of his seniority rights and the claim was denied. In Award 5538, Claimant voluntarily and in violation of orders brought himself into conflict with said Law.

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 Employe involved in this dispute are respectively Carrier and Employe 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 has not been compensated in the manner required by Rule 26 under the circumstances here present.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1954.