

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. The Carrier violated the provisions of the agreement between the parties when on Wednesday, June 11, 1952, it required Rest Day Relief employee E. D. Taylor to report for duty on his assigned rest day at 12:00 noon and work until 6:30 P. M., and refused to pay him a basic day of 8 hours at the rate of time and one-half.

2. The Carrier shall now be required to compensate Claimant Taylor for 8 hours at the rate of time and one-half, less the amount already paid him for work on June 11, 1952.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). A copy of this agreement is on file with the Board and is hereby made a part of this dispute as set out word for word.

Claimant E. D. Taylor held a rest day relief assignment at Tucumcari, New Mexico, working as follows:

Friday	Third Wire Chief	12:00 Midnight to 8:00 A.M.
Saturday	Third Wire Chief	12:00 Midnight to 8:00 A.M.
Sunday	First Wire Chief	8:00 A.M. to 4:00 P.M.
Monday	First Wire Chief	8:00 A.M. to 4:00 P.M.
Tuesday	Second Wire Chief	4:00 P.M. to 12:00 Midnight
Wednesday	Rest Day	
Thursday	Rest Day	

Due to the fact that there was extra work to perform on Wednesday, June 11, 1952, which could not be normally handled by the first and second shift wire chiefs at that location, the Carrier called Claimant Taylor out to work on one of his assigned rest days (June 11, 1952). He was required to work from 12:00 noon until 4:00 P. M., on the shift of the First Wire Chief

shall be paid for at the straight time rate when the entire number of hours constituting the regular week day assignment are assigned and worked.

"Section (b). When not assigned to work the hours of the regular week day assignment or when notified or called to work on Sundays and the above specified holidays a less number of hours than constitutes a day's work within the limits of the regular week day assignment, employes shall be paid a minimum allowance of three (3) hours at the overtime rate for three (3) hours work or less and at the overtime rate for all time worked after the third hour of each tour of duty.

"Section (c). Time worked before or after the limits of the regular week day assignment shall be paid for in accordance with the overtime provisions of Rule 14 or the call provisions of Rule 16."

"Rule 16

"NOTIFIED OR CALLED

"Section (a). An employe notified or called to perform work not continuous with the regular work period shall be allowed a minimum of two (2) hours at overtime rate for two (2) hours work or less, and if held on duty in excess of two (2) hours, the overtime rate shall be allowed on the minute basis. Each call to duty after being released shall be a separate call.

"Section (b). An employe who has completed his regular tour of duty and has been released, and who is required to return for further service within less than one (1) hour following such release, may be compensated as if on continuous duty.

"Section (c). An employe required to report for duty before his assigned starting time and who continues to work through his regular shift, shall be paid two (2) hours at the overtime rate for two (2) hours work or less, and at the overtime rate thereafter on the minute basis for the time required to work in advance of his regular starting time."

Clearly the language as well as the intent of Rule 7 of the current agreement supports the carrier's position.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and, therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

OPINION OF BOARD: Claimant, a regular relief employe with assigned hours and days for being on and off duty, was called to work on Wednesday, one of his assigned rest days. The relief position to which he was regularly assigned included a Sunday assignment.

For hours worked on the day in question, claim is made for 8 hours' pay at time and one-half the regular rate less compensation already received. Rule 7 (c)-1 of the Agreement between the parties effective December 1, 1944, revised and reprinted March 1, 1951, is cited and relied upon along with other rules that are said to support the claim.

The dispute is over a difference of opinion as to whether a distinction is to be made between a regular assignment and a relief assignment in applying Rule 7 (c)-1 for pay purposes.

Carrier is of the opinion that an employe occupying a relief telegrapher assignment which relieves on each of three shifts around the clock, even though assigned on Sunday, does not come within the purview of Rule 7 (c)-1. Petitioner says there is no distinction for pay purposes between regular relief employes and those relieved by them for applying the cited rule.

According to the record, claimant regularly relieves on a position that requires a Sunday assignment of the regular week-day hours. On the day in question, he performed service on his assigned rest day within the regular hourly limits of a week-day assignment. We hold, therefore, that the basis of pay is that provided by Rule 7 (c)-1.

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 Employees 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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1957.

DISSENT TO AWARD NO. 7828, DOCKET NO. TE-7280.

In this Award a regularly assigned relief Telegrapher furnishing rest day relief as follows:

Friday	Third Wire Chief	12:00 midnight to 8:00 A. M.
Saturday	Third Wire Chief	12:00 midnight to 8:00 A. M.
Sunday	First Wire Chief	8:00 A. M. to 4:00 P. M.
Monday	First Wire Chief	8:00 A. M. to 4:00 P. M.
Tuesday	Second Wire Chief	4:00 P. M. to 12:00 midnight

with Wednesday and Thursday rest days, was required to perform 6 hours, 30 minutes' extra service on his Wednesday rest day, June 11, 1952, during the period of

First Wire Chief assignment—from 12:00 noon to 4:00 P. M.—
4 hours

Second Wire Chief assignment—from 4:00 P. M. to 6:30 P. M.—
2½ hours

for which a minimum day of 8 hours at punitive rate was claimed and allowed by the majority under Section (c)-1, of Rule 7, of the governing Agreement, which reads:

"Section (c). Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

"1. Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight (8) hours, whether the required service is on their regular positions or on other work." (Emphasis supplied.)

on the bases that he was a regularly assigned employee, that his regular assignment included a Sunday assignment, that

"Claimant regularly relieves on a position that requires a Sunday assignment of the regular week-day hours."

and that

"He performed service on his assigned rest day within the regular hourly limits of a week-day assignment."

from which findings it can only be concluded that this claim was sustained on the premise that the extra service required of claimant was performed by him within the hourly limits of the week-day assignments of the First and Second Wire Chief regular assignments, which included a Sunday assignment of the regular week-day hours.

It is obvious that the language of this Section (c)-1, of Rule 7, as it has application to the instant case, pertains only to the Sunday, weekday, and hourly assignment of the claimant, and not to such elements of any other assignment during the tour of which claimant might be required to perform extra service.

It is equally obvious, upon noting the before-quoted regular assignment of claimant, regularly assigned relief Telegrapher, that, though his regular position includes a Sunday assignment, such Sunday assignment cannot possibly be of his regular position's regular week-day hours, for the simplest of reasons: His regular position does not have "regular week-day hours."

This record is conclusive that claimant did perform service on one of his rest days, and that Rule 7 is the applicable rule of the governing Agreement containing pay provisions for service on rest days; therefore, since the conditions of claimant's regular relief assignment clearly do not meet the stipulated requirements of Section (c)-1, of Rule 7, essential for it to have application to this claim, it is necessary that other provisions of that Rule 7, susceptible of application to this case, be applied.

We find that Section (c)-2-(b), of Rule 7, which provides:

"(b) On the rest days other than Sunday, a minimum allowance of two (2) hours at the overtime rate for two (2) hours' work or less and at the overtime rate for all time worked after the second hour of each tour of duty."

and under which the Carrier has compensated claimant, to be the Agreement rule having application to the instant claim.

We, therefore, dissent to the findings of the majority in this Award which hold Section (c)-1, of Rule 7, as applicable to this dispute.

/s/ C. P. Dugan

/s/ W. H. Castle

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ J. F. Mullen