

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis and St. Louis Railway, that:

(1) The Carrier violated the Agreement between the parties signatory thereto when it failed and refused to properly compensate Telegrapher E. E. Kimel, Montgomery, Minnesota, for December 25, 1954, and January 1, 1955, holidays.

(2) The Carrier shall now be required to compensate E. E. Kimel for eight (8) hours at the pro-rata hourly rate applicable to the third shift telegrapher's position at Montgomery, Minnesota, and

(3) The Carrier further violated the Agreement between the parties signatory thereto when on December 25, 1954, and January 1, 1955, it blanked the third shift telegraphers' position at Montgomery, Minnesota, and

(4) In consequence thereof the Carrier shall pay E. E. Kimel eight (8) hours at the time and one-half rate for December 25, 1954 and January 1, 1955, account denied the right to fill the seven day position at this location.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are on file with this Division of the National Railroad Adjustment Board, and by reference thereto are made a part of this submission.

This claim arises out of Carrier's refusal to pay claimant, extra telegrapher, E. E. Kimel, for eight (8) hours at the pro rata rate of pay applicable to the third shift telegrapher's position at Montgomery, Minnesota, for December 25, 1954, and January 1, 1955, two holidays, in accordance with the provisions of Article II, Section 1 and 3 of the August 21, 1954 Agreement. Additionally, the Carrier refuses to pay Claimant Kimel for eight (8) hours at the time and one-half rate for December 25, 1954, and January 1, 1955, when it denied him the right to fill the seven day position at Montgomery on those days.

Article 14 of Memo Agreement with the Telegraphers dated July 25, 1949, the Agreement in effect on dates covered by the instant claim and captioned "Guarantees", reads:

"Regular assigned telegraphers will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on assigned rest days and **holidays**."

This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier." (Emphasis ours.)

That Article is now Rule 6 in the new agreement with the Order of Railroad Telegraphers, effective September 1, 1955.

The position of third trick telegrapher Montgomery not being scheduled or assigned to work on Holidays, Claims 3 and 4 are without merit and should be denied.

All data in support of Carrier's Position has been presented to the representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents a two-fold claim by Petitioner. In parts (1) and (2) claim is made on behalf of Telegrapher E. E. Kimel for holiday pay at pro rata rates for December 25, 1954 and January 1, 1955. Parts (3) and (4) protest the blanking of the third shift telegrapher's position at Montgomery, Minn. on the same two holidays.

Parts (1) and (2) of the claim pose the question as to whether Claimant was entitled under Article II, Sections (1) and (3) of the National Agreement of August 21, 1954, to holiday pay for said holidays.

In determining this claim certain special circumstances which were not present in Award 8053 must be considered. Unless these different circumstances dictate a different decision than that made in Award 8053, the holding in that Award must determine the disposition of Parts (1) and (2) of the instant claim.

The special circumstances involved here exist by virtue of the fact that Claimant filled the position at Montgomery for a period of approximately five months. It appears that Article 15 (c) of the applicable agreement obligated the Carrier to bulletin this position as a temporary vacancy after sixty days. Apparently this was not done. In view of these facts we have a situation essentially the same as that involved in Second Division Award No. 2173, where the claim for holiday pay was sustained when the Carrier failed to follow the bulletin rule with respect to such situations. Because of this special aspect of the instant case this part of the claim will be sustained for eight hours holiday pay at pro rata rate.

Parts (3) and (4) of the claim challenge the Carrier's action in blanking the position in question at Montgomery on December 25, 1954 and January 1, 1955. From the record it appears that when this position has been bulletined from time to time it was specifically provided that the position would not be worked on holidays. In view of this fact and in view of the provisions of Article 14 of the applicable agreement, parts (3) and (4) of the claim are without merit and must be denied. This finding is supported by numerous Awards of this Division. Awards 7033, 7136, 7137, 7294.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 only to the extent indicated in Opinion of the Board.

AWARD

Parts (1) and (2) sustained.

Parts (3) and (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

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