# Award No. 9485
# Docket No. TE-8661

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Martin I. Rose, Referee**

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## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## ST. LOUIS, SAN FRANCISCO RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. The Carrier violated the Agreement between the parties when it failed and refused to properly compensate Helen Fellows, regularly assigned occupant of a seven-day position in the Springfield Relay Office; hours 8 A. M. to 4 P. M., rest days Wednesday and Thursday, for services performed 3 P. M. to 11 P. M. on Thursday, June 30, 1955, a rest day of her position.

2. The Carrier shall now compensate Claimant Fellows for eight (8) hours at the time and one-half rate in accordance with the provisions of Article II-A, Section 1, paragraph (o) (1) for service performed 3 P. M. to 4 P. M., and for seven (7) hours at the overtime rate of the position occupied in accordance with the provisions of paragraph 6 of Article II, as stipulated by Article II-A, Section 1, paragraph (o) IV of the agreement, less the amount already paid her for said work.

**EMPLOYES' STATEMENT OF FACTS:** An Agreement between the parties effective May 16, 1928, Revised effective May 16, 1953 and supplements thereto, are by reference made a part of this submission.

This claim arises out of Carrier's failure and refusal to properly compensate Claimant Helen Fellows, regularly assigned occupant of a seven-day position in the Springfield Relay Office for services performed 3:00 P. M. to 11:00 P. M. on Thursday, June 30, 1955, a rest day of her regular assignment. The position to which Miss Fellows is assigned has a starting time of 8:00 A. M. with the tour of duty ending at 4:00 P. M. The work week of the position is Friday through Thursday, work days Friday through Tuesday, rest days Wednesday and Thursday.

On Thursday, June 30, Claimant's rest day, she was ordered by the Carrier to perform work on another position in the Springfield Relay Office

half rate for the period 4:00 P. M. to 11:00 P. M. Employes further contend that the claimant was removed from or forced off of her regular assignment on Position No. 4.

There is no agreement support for either of these contentions. Thursday, June 30, 1955, was an assigned rest day for the claimant and she was not forced off of her regular assignment or removed from her regular assignment on such rest day, but was used in emergency to fill the assignment of an entirely separate position with different hours of work. The claimant could not have worked on her regularly assigned position on June 30, 1955 because a regularly assigned relief telegrapher was working on such position as a part of his bulletined work week on that date. For the service performed by the claimant in emergency on Position No. 7, because there was no extra telegrapher available and because the regular occupant of Position No. 7 was not available, Miss Fellows was compensated at the rate of time and one-half for all service performed on Position No. 7 from 3:00 P. M. to 11:00 P. M., June 30, 1955, and by such payment, the Carrier met all of the requirements of the governing agreement rules of the Telegraphers' Schedule.

If the regularly assigned occupant of Position No. 7 had been available to protect his position on June 30, 1955, he would have received eight hours' pay at time and one-half rate for service performed because this was a rest day, but here the Employes seek to exact payment of an additional seven hours at time and one-half rate from the Carrier. Carrier submits Employes' claim is entirely inconsistent with the governing agreement rules and that the payment of time and one-half rate for all service performed by the claimant fully complied with the provisions of the governing rules.

Paragraph V of Section 1 (o), Article II-A, is the governing rule, and the Carrier has complied with this rule. To sustain Employe's claim in this docket would require that the provisions of this rule be ignored. This Board has stated as a basic principle of contractual construction:

> "when some of the terms of an agreement are inconsistent, uncertain or ambiguous they will be construed so that no part of the contract will be disregarded or made meaningless." (Award 4959)

To sustain the claim advanced by the Employes in this docket would render meaningless Paragraph V, referred to.

The Employes admitted in their correspondence with the Carrier that the claimant was paid eight hours at time and one-half rate for the eight hours, service performed on Position No. 7, Thursday, June 30, 1955. There is no basis or agreement support for the additional seven hours claimed by Employes in this docket, and Carrier respectfully requests that such claim be denied in its entirety.

All data used in Carrier's position have been made available to the Employes in the handling on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts involved in this claim are not disputed. Claimant was the regular incumbent of Position No. 4, assigned hours of 8:00 A. M. to 4:00 P. M., rest days Wednesday and Thursday. These rest days of the position were part of a regular relief assignment. Position No. 7, in the same office, had assigned hours of 3:00 P. M. to 11:00 P. M., with rest

days on Wednesday and Thursday which were not part of a relief assignment and not ordinarily worked.

Because of an accumulation of work, Carrier deemed it necessary to work Position No. 7 on Thursday, June 30, 1955. Neither an extra telegrapher nor the regular incumbent of the position were available. Claimant, who was then on her rest days, was called and she worked Position No. 7 from 3:00 P. M. to 11:00 P. M. For such service, she was paid eight hours at the rate of time and one-half. Claim was made, and progressed, that she was entitled to be paid eight hours at the rate of time and one-half for work performed from 3:00 P. M. to 4:00 P. M., and seven hours at the time and one-half rate for work from 4:00 P. M. to 11:00 P. M., or, a total of fifteen hours at the time and one-half rate, less what she had already been paid. The claim was declined and now is appealed.

The Employes contend that Article II-A, Section 1, paragraph (o), II, A (1) of the applicable Agreement requires payment at the time and one-half rate with a minimum of eight hours for the one hour of work from 3:00 P. M. to 4:00 P. M., and that paragraph (o), IV of the same article requires the additional payment of seven hours at the overtime rate because the seven hours of work that was required from 4:00 P. M. to 11:00 P. M. were after the hours of Claimant's regular week day assignment.

It is the Carrier's position that Claimant was properly paid under Article II-A, Section 1, (o) V.

Paragraph (o) of Section 1, Article II-A of the Agreement is entitled "Service on Rest Days" and reads, in part, as follows:

> "II Employes required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following basis:
>
> > "A (1) Employes 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 hours, whether the required service is on their regular positions or on other work.
> >
> > * * * * *
>
> "IV Time worked before or after the hours of the regular week day assignment shall be paid for in accordance with the overtime provisions of Paragraph 6 or the call provisions of Paragraph 7 of Article II.
>
> "V Service rendered by an employe on his assigned rest day or days filling an assignment which is required to be worked or paid eight hours on such day will be paid for at the overtime rate with a minimum of eight hours."

Paragraph 6 and the call provisions of Paragraph 7 of Article II referred to in sub-paragraph IV quoted above state:

> "(6) (a) Except as otherwise provided, time worked in excess of eight hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

"(7) . . . Employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

The literal language of sub-paragraphs II, A (1) and IV, quoted above, cannot be ignored and is clearly applicable to the factual situation presented. Claimant was an employe "required to perform service on" one of her "rest days", Thursday, June 30, 1955. She was required to perform such service for one hour, 3:00 P. M. to 4:00 P. M., "within the hours of" her "regular week day assignment" of hours from 8:00 A. M. to 4:00 P. M. For such service, she was qualified for payment on the basis provided in sub-paragraph A (1), namely, "at the rate of time and one-half with a minimum of eight hours", because she was one of the "Employes occupying positions requiring a Sunday assignment of the regular week day hours". The hours Claimant worked from 4:00 P. M. to 11:00 P. M. were plainly "Time worked . . . after the hours of" her "regular week day assignment" and considered overtime to be paid at the time and one-half rate in accordance with the provisions for payment of overtime in Paragraph 6 of Article II.

The specific language of sub-paragraph II necessarily excludes the one hour worked by Claimant on her rest day within the hours of her regular week day assignment from the operation and effect of sub-paragraph V. Otherwise, the former provisions, as well as A (1) under sub-paragraph II, are left without meaning and effect. Furthermore, in view of the facts of the case, the Carrier's reliance on sub-paragraph V is misplaced. Position No. 7 was not an assignment which was "required to be worked" on Thursday or "paid eight hours on such day". The position assignment included Thursday as a rest day which was not part of a relief assignment and was not ordinarily worked.

**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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1960.

## DISSENT TO AWARD NO. 9485, DOCKET NO. TE-8661

This is a case wherein the majority supports the Organization in "doubling-up" rules to collect two payments for but eight hours of work. In **Award 3780** we held such to be erroneous.

There is nothing in Article II-A, Section 1, (o) which is intended to pay an employe more than eight hours at time and one-half for but eight hours of work. Yet, this Award erroneously authorizes a total payment of fifteen hours at time and one-half, or the equivalent of nearly three days' pay at the straight time rate, for but eight hours of work. The awarding of the additional payment authorizes overtime on overtime which Article II, paragraph (6) (d) expressly states shall not be. In addition to that, sub-paragraph I under Article II-A, Section 1, (o) states that the rule (Article II-A, Section 1, (o)) is not to be read to create, enlarge or take away rights or obligations arising under other rules, including rules adopted from the March 19, 1949, National Forty-Hour Week Agreement.

It is true that Claimant could fall under sub-paragraph II-A (1) of Article II-A, Section 1, (o) and be entitled to eight hours at time and one-half, but that does not mean she would be entitled to more under some other rule as against the fact she worked but eight hours. Certainly the language in sub-paragraph IV of Article II-A, Section 1, (o) cannot be ignored and it is equally certain that the language therein must be read in light of the rule therein referred to having application to the facts in this case, viz., Article II, paragraph (6) (a). To breathe sense into this sub-paragraph IV as it refers to Article II, paragraph (6), so that it will be consistent, harmonious and sensible, the employe must have **worked** "in excess of eight hours" in order for same to be applicable here. Such did not happen here. Nevertheless, the construction placed on sub-paragraph IV under the facts in this case holds that the employe need not have worked in excess of eight hours for same to be applicable or fictionalizes that the employe so worked when she did not. Such a construction is a definite enlargement upon Article II, paragraph (6) (a) because that rule on its face contemplates an employe having worked in excess of eight hours and is, therefore, contrary and violative of sub-paragraph I under Article II-A, Section 1, (o). This construction further violates Article II, paragraph (6) (d) which states that there shall be no overtime on overtime.

Carrier's reliance on sub-paragraph V is not misplaced and this sub-paragraph cannot be explained away merely because the Thursday rest day of Position No. 7 was not ordinarily worked. The language in sub-paragraph V covers service rendered by an employe on his rest day or days "filling an assignment which is required to be worked **or** paid eight hours on such day". In this case it is undisputed that the assignment was required to be worked eight hours on the date in question and for purposes of sub-paragraph V that is all that was necessary for same to be applicable.

There were two avenues of approach to the rules under the facts in this case, one of which would result in paying overtime on overtime in violation of paragraph (6) (d) of Article II and enlarging upon Article II, paragraph paragraph (6) (a) contrary to sub-paragraph I of Article II-A, Section 1, (o). We certainly cannot construe an Agreement in such a manner. The other approach was through sub-paragraph V of Article II-A, Section 1, (o) which would do no violence to the Agreement. There should have been no ques-

tion as to the path to be taken, but the majority chose the one that produced an erroneous, inconsistent and absurd result.

For the reasons stated, we dissent.

/s/ C. P. Dugan

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen

## ANSWER TO DISSENT TO AWARD NO. 9485, DOCKET NO. TE-8661

A dissent, to be of any practical value in the proper functioning of a tribunal such as the National Railroad Adjustment Board, must either state facts or express an opinion which is based on facts.

The Carrier Members' dissent to Award 9485 does neither, and thus serves no useful purpose.

In order to make this award more useful as a precedent in possible future cases involving the same principle, I believe it is quite proper to record my reasons for disagreeing with the Carrier Members' dissent.

First of all the dissenters misstate the substance of the ward. There was no "doubling-up" of rules to collect two payments for but eight hours of work. There was only a proper application of one rule, consisting of several parts, governing payment of an employe who is required by the carrier not only to forego an earned rest day but also to perform work on an assignment other than her own, and largely during hours other than those of her regular assignment. Award 3780 did not involve either a rule or factual circumstances comparable to those in this case and therefore is wholly irrelevant. The issues were entirely different.

When the dissenters contend that there is nothing in Article II-A, Section 1, (o) that provides for more than eight hours' pay for "but eight hours of work", they are either displaying gross ignorance of the English language or are indulging in wishful thinking. The award correctly interprets the language of the rule to mean what it says.

The rule is clearly divided into a number of parts. Subsection II applies in its entirety to employes whose service is required on their rest days **"within the hours of their regular week day assignment"**. Paragraph A (1) of this subsection applies to an employe whose regular week day assignment includes Sunday as a regular work day, and requires payment of a minimum of eight hours for time spent in service within the hours of the regular week day assignment, regardless of the amount of such time.

As the award clearly notes, Subsection IV applies to that part of the work requirement which is outside the hours of the regular week day assignment. The rate of pay is derived, by reference, from the overtime or call provisions of Article II. The dissenter's devious argument about the effect of paragraph (6) of Article II, has no basis in either fact or logical reasoning.

It is significant, I think, that the dissenters have failed to substantiate their arguments with citation of awards that deal with a set of facts comparable to those here. The reason is obvious: There are no such awards. To the contrary, there are a number of awards which hold that where a rule plainly makes provisions for payment on more than one basis, and where the service is not confined to the hours of the regular week day assignment, the rules will be applied as written: Award 813, 2205, 3229, 3836, 4461 and 5434, for example.

The award correctly holds that subsection V has no application to the facts of this case. The absolute correctness of that holding should be apparent to any one, and doubly so to anyone who is familiar with the history of the development of this rule. I am perfectly familiar with this provision and how it was included in the rule. The author of the Dissent should also be familiar with those circumstances.

Finally, the dissenters' attempt to characterize the holding of this award as the imposition of "overtime on overtime" contrary to the provisions of Article II, (6), (d), is so clearly falacious that it requires no effort toward refutation here. The language of the cited rule refutes the argument more eloquently than any words of mine might do.

This is a correct award, and has suffered no damage from the dissenters' attack.

**J. W. Whitehouse,**
Labor Member.

## REPLY TO LABOR MEMBER'S ANSWER TO DISSENT TO AWARD NO. 9485, DOCKET NO. TE-8661

The function of the Board is that of interpreting rules as written. To do so, effect must be given to the entire language of the Agreement and the different provisions in it should be reconciled so that they are consistent, harmonious and sensible. **(Award 6856 — Carter)** When an award, such as the subject award, fails to give effect to the entire language of the Agreement, particularly to a rule which is specifically referred to in the provision relied upon by the majority in making its decision, then the Board has shirked its duty.

**/s/ C. P. Dugan**

**/s/ R. A. Carroll**

**/s/ W. H. Castle**

**/s/ J. E. Kemp**

**/s/ J. F. Mullen**