

Award No. 9962

Docket No. TE-8654

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

(1) Carrier violated the agreement in failing and refusing to properly compensate Mrs. Juanita Alley for services rendered March 12 and 13, 1955.

(2) Carrier shall now be required to compensate Mrs. Juanita Alley at time and one-half pro rata for services rendered on March 12 and 13, 1955, less amounts already paid for such services.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement effective May 1, 1924, entered into by and between Tennessee Central Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, which Agreement has been in several respects amended. The Agreement as amended is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

This dispute concerns interpretation of the collective bargaining Agreement and has been handled in the usual manner through the highest officer designated by Management to consider such disputes, and failed of adjustment. The dispute is submitted to this Division under the provisions of the Railway Labor Act, as amended.

Mrs. Juanita Alley is a regular assigned employee at Nashville, Tennessee. The designation of the place of employment is Shops. Her assignment covers the second shift. The hours assigned are 2:30 P.M. to 10:30 P.M.

Prior to March 12, 1955, the assigned work days of this position for Mrs. Alley were Monday, Tuesday, Wednesday, Thursday, and Friday. The assigned rest days were Saturday and Sunday.

On March 4, 1955, Management issued the following bulletin:

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

The issue here presented has, therefore, already been decided by denial of the claim presented in Award 6281.

Carrier respectfully submits that for the reasons given the instant claim should be denied.

* * * * *

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matter not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerning a claim for overtime for services performed on March 12 and 13, 1955, stems from a change in Claimant's rest days.

The facts are not in controversy. Claimant is a regularly assigned second trick operator-clerk whose work week extended from Monday through Friday with Saturday and Sunday as rest days. On March 4, 1955, Carrier issued a bulletin changing the rest days to Tuesday and Wednesday effective Saturday, March 12, 1955. Claimant observed her rest days on Saturday and Sunday, March 5 and 6, 1955, and then worked the following eight consecutive days from March 7 through 14, being paid straight time for the days in question, March 12 and 13, the sixth and seventh of those eight days.

Petitioner recognizes Carrier's right to change rest days, but insists that Claimant is entitled nevertheless, for her March 12 and 13 work, to time and one-half rather than straight time pay under Rule 4 (a) which provides for such compensation for work in excess of forty straight time hours or five days in any work week. It is Carrier's position that since it is permitted to change rest days and the Agreement prescribes no restrictions in that regard, it should not be penalized when it effects those changes. It contends that March 12 and 13 were ordinary work days inasmuch as Claimant's prior work week ceased to exist on March 12 and a new work week of Saturday through Friday with Tuesday and Wednesday as regular rest days was assigned Claimant's position.

Section 1 (i) of Rule 8 expressly recognizes Carrier's right to change rest days. The problem that arises, however, is that when those changes are made the employees affected are required to accommodate them by either taking more than two days off or working more than five consecutive days or forty hours without overtime compensation.

The question is not a novel one and has been before the Board on a number of occasions. The Awards that have considered the matter have not been consistent in their holdings and there appears to be no valid basis for reconciling many of the conflicting opinions. The fact is that they differ sharply

on the broad principle that is involved and both the Carrier and the Organization are in a position to cite awards that lend support to their respective positions. While Carrier's contentions possess considerable appeal in the present case, it is our opinion that Awards 7319, 7324, 8144, 8868, 9243 and 9548 of this Division as well as Special Board of Adjustment No. 186, Awards 7 and 8 represent the better view and are sound and determinative of the issues (See to the contrary Awards 5854, 6211 and 6281, among others, and Special Board No. 305, Awards 3 and 6). What impresses us is that it would have been easy, if their intention had been compatible with Carrier's theory of the case, for the parties to the Agreement to have carved out the necessary exceptions from the overtime rules, or to have provided affirmatively that rest days may be changed without overtime compensation. In the absence of such contract language, an employe in the circumstances of this case, which are substantially similar to those considered in Award 7319 and Special Board No. 186, Awards 7 and 8, is entitled to time and one-half compensation for the work performed on the sixth and seventh consecutive days, particularly when that work results from the Carrier's own changes in the rest days. There was no transfer of position involved and we do not agree that Claimant was "moving from one assignment to another" within the meaning of Rule 4 (a) or that Rule 8, Section 1 requires a different result.

The claim will be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 9th day of June, 1961.

DISSENT TO AWARD NO. 9962, DOCKET NO. TE-8654

The Carrier Members have dissented to each of the Awards of the Division relied upon by the majority.