

Award No. 10602

Docket No. TE-9355

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 that:

Case No. 1:

(1) Carrier violated the Agreement between the parties hereto when on the 26th day of December, 1955 and again on the 2nd day of January, 1956, it required E. D. Rountree, regular assigned Report Clerk-Operator (9:15 P. M. to 5:15 A. M.) Chief Dispatcher's Office, Savannah, Georgia, to suspend work on his position during regular hours and blanked the position on such dates.

(2) Carrier will be required to compensate E. D. Rountree for two days time lost, at time and one-half pro rata rate, account such violations of the Agreement. (Pro rata rate \$2.13 per hour). Total claim 16 hours at \$3.20 per hour—\$51.20.

Case No. 2:

(3) Carrier violated the Agreement between the parties hereto when on the 22nd day of February, 1956, it required G. G. Stanford, Jr., regular assigned swing relief position at Savannah, Georgia, to suspend work on his position (9:15 P. M. to 5:15 A. M. Chief Dispatcher's Office) during regular hours and blanked the position on such date.

(4) Carrier will be required to compensate G. G. Stanford, Jr., for one day time lost (8 hours) at time and one-half pro rata rate, account such violation of the Agreement. (Pro rata rate \$2.13 per hour). Total claim 8 hours at \$3.20 per hour—\$25.60.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect, a collective bargaining agreement, entered into by and between Seaboard Air Line Railroad, hereinafter referred to as Management or Carrier and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective October 1, 1944 and has been amended. The Rules Agreement and amendments are on file with this Division and are,

no equitable powers and, consequently no authority to impose its ideas of justice and fairness in a matter that is plainly covered in the agreement by clear and concise language." (Also see Third Division Awards 6488 and 6739.)

There is no prohibition against the carrier blanking a job, likewise there is no rule which specifies when work must be performed. The fact that the GM-14 Report is usually filed by the Report Clerk-Operator during his regular tour of duty does not in anywise prevent the carrier from transferring the duty to another telegrapher position, or change the time when it is filed or in fact discontinue it entirely without being in violation of the Telegraphers' Agreement. There was no work performed by telegraphers during the assigned hours of claimants' position on dates in question. Claimants were called to perform work in accordance with the provisions of the third paragraph of the Agreement of July 25, 1949, reading:

"Seven-Day Positions:—Employees occupying seven-day positions if required to work on a specified holiday, within the hours of the regular week-day assignment, will be paid at the time and one-half rate with a minimum of eight (8) hours. Time worked before or after the regular week-day assignment will be paid for in accordance with the overtime provisions of Rule 7 or the call provisions of Rule 8."

Claimants were called to work outside of their established hours to make the report and were properly paid therefor. In this connection please see

Third Division Award 7294 wherein it was held in part:

"A holiday within a work week creates an exception to the five day work week rule. It may be blanked in whole or in part, or it may be blanked and the occupant given a call to perform the necessary work."

Rather than being a violation of any expressed or implied provision of the Telegraphers' Agreement, the handling given in the instant cases was in strict compliance with the spirit and intent of the controlling agreements and was in keeping with the established practice.

Carrier affirmatively asserts that all data submitted herein have been discussed with the petitioning organization representative.

OPINION OF BOARD: Christmas in 1955, and New Year's Day in 1956, which are paid holidays under the Agreement, fell on consecutive Sundays, and under the terms of said Agreement were observed on Monday, December 26, 1955 and January 2, 1956. Likewise, Washington's Birthday, also a paid holiday under the Agreement, was observed on February 22, 1956.

Claimant, E. D. Rountree, occupied the position described as "87 Report-Clerk Operator" in the Chief Dispatcher's office at Savannah, Georgia. He was regularly assigned to work between 9:15 P.M. to 5:15 A.M., Thursdays through Mondays, with rest days on Tuesdays and Wednesdays. This was a seven day position.

Claimant G. G. Stanford, Jr., was a relief employe who worked on various jobs Saturdays through Wednesdays with Thursdays and Fridays as his rest days. On Tuesdays and Wednesdays he worked as "87 Report-Clerk Operator" in the Chief Dispatcher's office at Savannah, Georgia, between 9:15 P.M. and 5:15 A.M.

On December 14, 1955, the Carrier notified Claimant, Rountree, that the office would be closed on the legal holidays, December 26, 1955, and January 2, 1956. The same notice contained a postscript addressed to Rountree which read as follows:

"Cys—E. R. Rountree: Make call at 5:20 A. M. December 27th and January 3rd to make up GM-14, transmitted along with the one from Alabama Division to Norfolk."

Claimant, Rountree reported to work as directed at 5:20 A. M. on each of the days, worked two hours each time and was paid at the overtime rate. A claim was filed with the Carrier "for sixteen hours at the time and one-half rate—8 hours December 26, 1955, and 8 hours January 2, 1956."

Claimant, Stanford was regularly scheduled to start work at 9:15 P. M. on February 22, 1956, and remain at his work until 5:15 A. M. on February 23, 1956. Carrier advised him, however, that there would be no work on the holiday, February 22, 1956, but he "was instructed to make a call at 5:20 A. M. February 23, 1956, to make and transmit GM-14 Report to the General Office at Norfolk."

Pursuant to the instructions, Claimant, Stanford reported at 5:20 A. M., on February 23, 1956, worked two hours and was paid at the overtime rate. A claim was filed with the Carrier for 8 hours at time and one-half the rate of his position for February 22, 1956.

Section 2 of Rule 12—Holiday Work provides:

"Time worked on the following holidays, namely, New Years Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid for on the following basis:

Five or Six-Day Positions—At the time and one-half rate with a minimum of three (3) hours, for three hours work or less, for each tour of duty.

Seven-day Positions—Employees occupying seven day positions if requested to work on a specified holiday, within the hours of the regular week-day assignment, will be paid at the time and one-half rate with a minimum of eight (8) hours. Time worked before or after the regular week-day assignment will be paid for in accordance with the overtime provisions of Rule 7 or the call provisions of Rule 8."

There is agreement between the parties that the Claimants occupied seven-day positions. There is also agreement that both Claimants were paid for each of the holidays as provided in the Agreement of August 21, 1954, but they were not paid as provided in Rule 12 quoted above. Instead they were each paid for two hours work after 5:20 A. M. on December 27, 1955, January 3, 1956 and February 23, 1956, as provided in Rule 8 which states:

"When notified or called to work outside of established hours employees will be paid a minimum allowance of two hours at overtime rate."

The Carrier contends that it had a right to blank the positions on each of the holidays. With this we have no quarrel. The question to be decided by

this Board, However, is whether the Carrier actually did blank each of the holidays when it required the Claimants to report for work at 5:20 A.M. (five minutes after their normal quitting time) on each of the holidays to perform work which each Claimant normally did during their regular scheduled hours and which work was required to be performed before the next regular scheduled employee reported for work?

Each of the Claimants, while working the hours from 9:15 P.M. to 5:15 A.M. regularly performed the following work:

- "1. Compile information for and prepare 87 Report
2. Correct and file telegraph service employees' time slips
3. Compile information for and prepare GM 14 Report
4. Handle any relay message work that is necessary in 'S.A.' Telegraph office."

* * * * *

"The GM-14 Report is a morning situation report, designed to show conditions of the railroad. It is normally made up about 2:00 A.M. and usually requires two hours in the preparation. About 5:10 A.M. the report is transmitted by teletype printer, to the general telegraph office of carrier at Norfolk, Virginia."

"Between 3 and 3:30 A.M. the occupant of the position receives and copies, by Morse telegraph, in 'SA office GM-14 Report for Alabama Operating Division. About 5:00 A.M. this report is transmitted by teletype printer to the general telegraph office of the carrier at Norfolk."

At the hearing before the Board, the Carrier representative admitted that it could not have called any other employee to perform the work on and after 5:20 A.M., and that the work performed by each Claimant on each of the holidays was precisely the same work which they normally did during their regular scheduled hours.

Carrier argues that since the work was not performed on the holidays "within the hours of the regular week-day assignment" the Claimants were properly paid under the requirements of Rule 8.

Rule 8 guarantees an employee who is called to work before or after his "established hours" a minimum of two hours at the overtime rate. It covers an employee who is called and used to perform work arising outside his assigned hours.

We have held that a Carrier cannot direct holiday work to another employee on an overtime basis and avoid the provisions of Section 2 of Rule 12. In Award 5824 (Guthrie) we said:

"On the date in question, January 2, 1950, the occupant of the third trick position with assigned hours 11:30 P.M. to 7:30 A.M. was instructed to work until 8:00 A.M. on an overtime basis. Thus, he performed 30 minutes work which would ordinarily have been performed by claimant as the first 30 minutes of his trick.

"The Carrier required the 4th or middle trick occupant to begin work at 8:00 A.M. on January 2 and work through his regular shift hours to 4:00 P.M.

"It is clear from the record that claimant's position did work on January 2, 1950, at least for the period between 7:30 A. M. and 8:00 A. M. Since work was required for this period it belonged to claimant since he was the only one who was assigned to work between these times."

Had the Carrier assigned an employee other than the Claimants on each of the holidays to work any hours between 9:15 P. M. and 5:15 A. M., to make up GM-14 and transmitted along with the one from Alabama Division to Norfolk, Claimants would have been entitled to eight hours pay at time and one-half, the applicable rate, for each of the holidays.

The mere fact that the Claimants were called to report at 5:20 A. M.—five minutes after their normal quitting time is another matter. The work done after 5:20 A. M. belonged to the Claimants, it was normally performed during their regular scheduled hours, it was not emergency or additional work contemplated by Rule 8, and it had to be done at or near the hour designated by the Carrier. It is not the purpose of any agreement to permit one party by subterfuge to avoid the explicit terms thereof. The facts in this case clearly show a deliberate attempt by the Carrier to avoid an explicit obligation.

Under Rule 12 each of the Claimants is entitled to 8 hours at the over-time rate for each of the holidays. The amount they received for work on those days should, however, be credited.

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 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 Carrier violated the Agreement.

AWARD

Claimant, E. R. Rountree shall be paid \$38.40—\$51.20 less \$12.80—for December 26, 1955 and January 2, 1956, and Claimant, G. G. Stanford shall be paid \$19.20—\$25.60 less \$6.40—for February 22, 1956.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May, 1962.