

Award No. 10803
Docket No. TE-9527

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, 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:

1. Carrier violated agreement between the parties when it failed and refused to compensate Telegrapher C. D. Kinard, at time and one-half rate for eight (8) hours, for service on Clerk-Operator position, Clinton, South Carolina, July 27, 1956.

2. Carrier shall be required to compensate C. D. Kinard in the sum of \$7.80, the difference between pro rata rate (\$1.950 per hour) paid and time and one-half rate (\$2.925 per hour) that should have been paid, for eight hours service on July 27, 1956.

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

The dispute submitted herein involves interpretation of the written Agreement and was handled on the property in the usual manner through the highest officer designated by the Carrier to handle such matters and failed of adjustment. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the subject matter and the parties hereto.

The dispute involves the question of proper compensation for an extra employe (claimant), for services rendered on the 27th day of July, 1956, at Clinton, South Carolina.

At the times involved herein, the Claimant, C. D. Kinard, was an extra employe (provided for in Rule 15), holding seniority on Seniority District No. 3. In the due course of filling assignment (in lieu of regular incumbent) at

fore, paid at the time and one-half rate for service on the two rest days of the assignment that he assumed, retained and reverted back to.

In Example No. 3 the extra operator assumed the assignment of a swing position and again account there being no other extra operator available, he was used off of such assignment on one of his rest days and as he had not been relieved from such assignment he retained the rights to the rest days and was allowed the punitive rate for such service on the rest day of the assignment he assumed and retained.

In this connection attention is directed to the Opinion in Third Division, N.R.A.B., Award 7086 with Referee Dudley E. Whiting wherein it was held in part—"We have repeatedly held that rest days attach to a position, not to an employe so that he may not carry them with him as he moves from one position to another." See also Third Division Award 6408.

Carrier affirmatively states that all data used herein has been discussed with or is well known by the General Chairman of the petitioning organization.

OPINION OF BOARD: Claimant was, on relevant dates, an extra operator on Seniority District No. 3. Commencing July 11, 1956, he was assigned to work on Third-shift (11:59 P.M. to 7:59 A.M.) Operator-Clerk position at Elberton, Georgia. The assigned rest days were Thursday and Friday of each week.

The work week commencing July 21st (Saturday), Claimant worked at Elberton, as follows:

Saturday	July 21	11:59 P.M. to 7:59 A.M.
Sunday	July 22	11:59 P.M. to 7:59 A.M.
Monday	July 23	11:59 P.M. to 7:59 A.M.
Tuesday	July 24	11:59 P.M. to 7:59 A.M.
Wednesday	July 25	11:59 P.M. to 7:59 A.M.

Claimant did not perform any service credited to Thursday, July 26, a rest day of the position. However, on Friday, July 27th, he was required to perform service on first shift operator position (7:59 A.M. to 3:59 P.M.) at Clinton.

Carrier paid Claimant for 8 hours at the pro rata rate of the first shift operator position at Clinton, for services on July 27th, 1956. The Organization thereupon filed claim and asserted that Claimant should have been paid at time and one-half rate for services on this date.

The Organization here contends that Claimant, since he had worked the full work week of the assignment at Elberton, was entitled to the two rest days of that position; and, if used to perform service on either rest day Carrier was required to pay time and one-half rate. Carrier, on the other hand, contends that "Letter No. 5—O. R. T.", dated November 3, 1950, does not so provide.

We have thoroughly examined the record of submissions presented by both parties and awards cited therein. The factual situation here is identical in principle with Example No. 3 of Letter No. 5. It is our conclusion that the position of Employes must be sustained. We can see no relevant difference in the applicable rules here and those involved in prior awards. Awards 6970, 6971, 6972, 6978, 7391 and 10391.

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 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 28th day of September, 1962.