Award No. 10901

Docket No. TE-9349

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(South-Central District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South Central and Northwestern Districts), that:

1. Carrier violated Agreement between the parties when it failed and refused to compensate D. D. Deakin at the time and one-half rate for services performed on 12th day of November, 1955, at Dayton, Idaho.

2. Carrier will be required to compensate D. D. Deakin for 8 hours at time and one-half rate for services performed at Dayton, Idaho, on the 12th day of November, 1955. (Less amount heretofore paid for such services.)

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Union Pacific Railroad Company (South Central and Northwestern Districts), hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective January 1, 1952. The Agreement, as amended, is on file with this Division and is, by reference, made a part hereof as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining agreement and is, under the provisions of the Railway Labor Act, as amended, referable to this Division for award.

The facts are as follows:

D. D. Deakin, an extra telegrapher, was, prior to the date involved herein, assigned to relieve the second shift telegrapher at Dayton, Idaho. The rest days of the assignment were Saturday and Sunday of each week. On November 8, 1955, Management gave notice that the rest days of the assignment were changed to Sunday and Monday. As a result, insofar

day, April 3 and 4, were his new rest days and he did not work on those days. He thereafter worked in accordance with the new work week. It is here claimed that when Claimant was required to work on Tuesday and Wednesday, March 30 and 31, he was working the sixth and seventh days of his work week and that he should have been paid the rest day rate. The claim is for the difference between the pro rata rate which he was paid and the time and one-half rate for those days.

"We point out that the order changing Claimant's rest days became effective at 7:59 P. M. on Monday, March 29, 1954. The new work week began on Monday, March 29, 1954 at 11:59 P.M. It is clear, therefore, that Tuesday and Wednesday, March 30 and 31 were work days in the new work week commencing on Monday, March 29, at 11:59 P. M. The days claimed to be rest days are not such. This is the only issue raised by the claim and the only issue we here decide. No other rules of agreement are involved. They are in fact work days in the new work week and Claimant is entitled to the pro rata rate for working those days."

The records clearly show that the first day the new work week commenced at 5:00 P. M., Tuesday, November 8 and the remaining days of the new work week were Wednesday, November 9; Thursday, November 10; Friday, November 11; and Saturday, November 12. Sunday and Monday, November 13 and 14, were the new rest days, and the Claimant did not work on those days.

Moreover, the Claimant does not qualify under the provisions of Rule 24 (c) cited by the Organization for payment sought because he did not perform work in excess of five days or forty hours in any work week.

Under the clear language of the agreement provisions involved, the claim must be denied. The Claimant would be entitled to payment of overtime for the date of November 12 only upon a showing and finding that the Claimant in the work week Tuesday, November 8 through Monday, November 14, 1955, worked in excess of five days or forty straight time hours.

The record and the rules of the Agreement compel a denial of the claim in this case.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant had an assignment with the work week of Monday through Friday with Saturday and Sunday as rest days. He observed rest days on Saturday and Sunday, November 5 and 6, 1955 and continued his assignment by working Monday, November 7. On Tuesday, November 8 Carrier notified Claimant that his rest days were changed from Saturday and Sunday to Sunday and Monday. This change in rest days, which Carrier

apparently made effective on November 8, resulted in Claimant working Mondays through Saturday, November 7 to 12, a total of six consecutive days. Claimant requested the overtime rate of pay (time and one-half) for November 12, but Carrier paid him the straight time rate. His claim for the difference in the two rates was denied at all stages by the Carrier and processed to this Board.

The Organization contends that the Carrier by changing Claimant's rest days, apparently to meet service requirements, required him to work six consecutive days and must pay him at the rate of time and one-half for the work on Saturday, November 12 which was in excess of 40 hours. It relies upon Rule 24 (e) of the Agreement which reads:

> "(c) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (g) of Rule 29 of Article 5.
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> "Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (g) of Rule 29 of Article 5."

Carrier argues that it is obligated to pay the overtime rate only for time in excess of 40 hours in any work week. Carrier maintains that Saturday, November 12 was the fifth day of the new work week which began on Tuesday the 8th and that since Claimant did not work more than five days in the new work week he was properly paid at the straight time rate for the work on November 12: it further asserts that Rule 29(k) which gives Carrier the right to change rest days to meet service requirements says nothing about any penalty for change; and, urges that when this rule is considered with Rule 24(c) they authorize such action as that in the instant case without liability for overtime.

Carrier advances the theory that where the change in rest days is made so that the new work week begins on the first day of that week Carrier is not liable for overtime in case Claimant has worked six consecutive days. Under this theory it could conceivably have an employe work as many as ten days straight without overtime. Here if Carrier had started the new work week on Saturday, November 12 after proper notice then Claimant would have worked from November 7 to 16 and under Carrier's theory would be entitled only to straight time pay. Carrier seeks to draw a distinction between the situation where the new rest days come after five days of work in the new work week and where they come in the middle of the new work week. In the judgment of the Board this distinction is without merit. The question of overtime pay for more than 40 hours of work cannot be determined on any such basis.

The principal question here is Claimant's right to overtime pay for the sixth day of work. While Rule 29(k) of Article 5 gives Carrier the right to change rest days, upon proper notice, to meet service require-

ments, it does not say that this can be done without penalty. It would have been easy for the parties to have said that rest days may be changed without overtime compensation if they intended such. The rest day rule must be read in connection with other rules of the Agreement, such as the overtime and guarantee rules, and cannot be given the effect of limiting such rules. Here again the parties could have carved out an exception to the overtime rules for changes in rest days if that was their intention. In the absence of such contract language, an employe is entitled to time and one-half compensation for work performed on the sixth consecutive day when the work results from the Carrier's change in rest days.

This position is supported by Award 10530 (Third Division, Supplemental) involving exactly the same issue between the same parties, which must be deemed controlling unless palpably erroneous. We do not so regard it.

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 Employes involved in this dispute are respectively Carrier and Employes 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 November 1962.