Award No. 10908
Docket No. TE-9674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado and Santa Fe Railway Company, that

1. Carrier violated the Agreement between the parties when it refused and continues to refuse to compensate J. W. Carter, for Tuesday, May 15, 1956, a regularly assigned work day of his assigned work week.

2. The Carrier shall now be required to compensate J. W. Carter the equivalent of eight hours' pay at the pro rata rate applicable to the position, to which entitled, and not permitted to work Tuesday, May 15, 1956.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

Pursuant to the provisions of rules adopted by the parties for the purpose of putting the 40-Hour Week Agreement into effect on September 1, 1949, a regularly assigned rest day relief position was established, identified as swing position No. 25, to perform work on rest days of regularly assigned positions in the yard office at Sweetwater, Texas. The assignment was as follows:

Saturday-Sunday	Telegrapher	Printer	Clerk	7:45 A. M. to 3:45 P. M.
Monday-Tuesday	"	"	"	10:00 A. M. to 6:00 P. M.
Wednesday	"	"	"	3:45 P. M. to 11:45 P. M.

Rest days Thursday and Friday

Claimant Carter, regularly assigned occupant of the above position, was notified that, effective May 15, 1956, Position No. 445 (assigned 10:00 A. M. to 6:00 P. M.) on which he performed relief work on Mondays and

OPINION OF BOARD: This is a dispute between The Order of Railroad Telegraphers and The Atchison, Topeka and Santa Fe Railway.

Claimant occupied a relief position with rest days of Thursday and Friday. He was given proper notice that his position was being changed to a relief position with rest days of Saturday and Sunday. The change took place on Tuesday, May 15, 1956. Claimant was to work from 7:45 A. M. to 3:45 P. M. Having worked until 6:00 P. M. the previous day, Claimant could not begin work prior to 9:00 A. M. on May 15, without violating the Federal Hours of Service Act unless an emergency existed. The Carrier did not permit Claimant to work any part of his assignment on May 15.

The Employes contend that the Carrier violated the Agreement when it refused to permit the Claimant to work on one of the regularly assigned workdays of his position.

Carrier contends that Claimant's workweek was changed on May 15, and that Claimant was not available because of the Federal Hours of Service Law. They also contend that Claimant did not lose a day's work.

There are many awards dealing with similar disputes. Although there may have been some distinction of facts, the decisions did not choose to deviate; they covered the broad scope involved here. We cannot agree with the previous decisions but we are not prepared to hold that they are in palpable error. We believe that the previous decisions have overlooked one of the purposes of the Agreement; i.e., to guarantee the Employe a standard number of hours of work and take home pay. Claimant, in our judgment, has not lost any take home pay. Further, he has not lost a day's work by the change. Under their previous schedule he would have worked twenty-two days during the month of May, and as changed, he worked twenty-two days during the month of May.

The Agreement gives the Carrier the right to change workweek, with proper notice. We believe this was done. The Employe accepted the new workweek, knowing that the Federal Hours of Service Act would have prevented his working on the 16th of May.

However, we cannot say that the previous line of awards are palpably wrong and for this reason will follow the line of decisions established in the previous awards.

For the foregoing reasons we believe there was a violation of the Agreement.

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 19th day of November 1962.