Award No. 11036

Docket No. TE-9526

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY—EASTERN DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad, that:

1. Carrier violated Agreement between the parties hereto when it failed and refused to compensate N. L. Brown at time and one-half rate ($3.07 per hour) for services performed on July 19, 1956, at Hastings, Nebraska.

2. Carrier will be required to pay N. L. Brown (in addition to compensation heretofore paid for services on July 19, 1956, Hastings, Nebraska) the sum of $8.19.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between Union Pacific Railroad Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes. The Agreement was effective February 1, 1951 and has been amended. The Agreement, as amended, is on file with National Railroad Adjustment Board, Third Division, and, by reference, is made a part of this submission as though set out herein word for word.

This dispute involves interpretation of the agreement and was handled on the property, in the usual manner, through the highest officer designated by Carrier to handle such claims. Carrier representatives failed and refused to adjust the dispute in accordance with the provisions of the agreement. This Division has jurisdiction of the parties and the subject matter.

The dispute involves the amount of compensation due the claimant, N. L. Brown, for services performed on the 19th day of July, 1956, at Hastings, Nebraska. The claimant worked 8 hours and was paid for 8 hours at the pro rata rate of the position ($2.0475 per hour). Employes contend that he should have been paid at the rate of $3.07 per hour for service on this date. Thus, the claim is for the difference between $16.38 paid and $24.57, i.e., $8.19.

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. The decision is controlled by Award 7319.

"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. See Award 7319."

It will be noted that the above-cited awards all contain a common principle; namely, that when an employe's rest days are changed he assumes a new work week and cannot thereafter use his old rest days as a media for collecting time and one-half rate. Otherwise stated, when an employe's rest days are changed, the change in work weeks is immediate and absolute.

Applying this principle to the instant claim results in the conclusion that the claim of the Organization is completely without merit. The claimant originally had rest days of Wednesday and Thursday. He was given a timely notice that effective Thursday, July 19, 1956, his rest days would be changed to Tuesday and Wednesday, thus establishing for him a new work week of Thursday through Monday. This change was effective Thursday, July 19, 1956. Therefore, when Claimant worked on that day, Thursday, July 19, 1956, he was not working a rest day of a then defunct work week—he was working the first work day of his new work week. He is not, therefore, entitled to the time and one-half rate of pay for working on July 19, 1956.

Claim should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The issue presented by this dispute has been before the Board on numerous occasions: Awards 5586, 8077, 8145, 9962, 10530, 10674, 10901, among others.

The issue having been decided by this line of awards, 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 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 23rd day of January 1963.