

Award No. 11076

Docket No. TE-8951

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway Company; that

1. The Carrier violated and continues to violate the Agreement between the parties when it refused and continues to refuse to compensate N. L. Bacastow and R. C. Hunter for service performed on rest days as provided by said Agreement; and

2. The carrier shall now be required to pay N. L. Bacastow the equivalent of four hours' pay at the time and one-half rate for each day July 1, 1955 and July 7, 1955, in addition to the amount already received; and pay R. C. Hunter the equivalent of three hours and forty five minutes at the time and one-half rate for July 8, 1955, in addition to the amount already received.

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

N. L. Bacastow occupied a rest day relief position in Carrier's relay telegraph office at Arkansas City, Kansas, with an assignment as follows:

Saturday 7:45 A. M. to 3:45 P. M.
Sunday 7:45 A. M. to 3:45 P. M.
Monday 7:45 A. M. to 3:45 P. M.
Tuesday 8:00 A. M. to 4:00 P. M.
Wednesday 8:00 A. M. to 4:00 P. M.
Rest days Thursday and Friday

She was required to work on her rest days, Friday, July 1, 1955, and Thursday, July 7, 1955, from 12:00 noon to 8:00 P. M. and was allowed eight hours' pay at the time and one-half rate. Claim was filed in her behalf for an additional payment equivalent to four hours' pay at the time and one-half rate for each of the days involved. Claim was subsequently appealed to the highest officer designated by the Carrier to handle such disputes and was denied.

to compensation at the rate of time and one-half with a minimum of eight hours.

“*Section 20-e. Service rendered by an employe on his assigned rest day or days filling an assignment which is required to be worked or paid eight hours on such day will be paid for at the overtime rate with a minimum of eight hours.”

As also previously shown herein, the claimants Bacastow and Hunter were paid eight hours at the time and one-half rate for service performed on the rest days involved in this dispute, and no additional payment is due them.

In conclusion, the Carrier reiterates that neither the Agreement rules cited by the Employees nor others support their claim in the instant dispute, and respectfully requests that the claim be denied.

The Carrier is uninformed as to the argument the Employees will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the petitioning Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: The issue in this case is whether a distinction is to be made between a regular assignment and a regular relief assignment in applying the provisions of the Agreement pertaining to Overtime pay (Article III, Section 3) for Service on Rest Days (Article III, Sections 20-a, 20-b, 20-d).

Carrier argues that an employee occupying a regular relief assignment, does not come within the purview of the cited Articles. An analysis of the Articles does not support this proposition. Each Section of the pertinent Articles uses the word “employees” without qualification. The repetitious use of the term is convincingly persuasive that “employees” on regular relief assignments are not to be less favorably treated than those holding regular assignments. The fact that the latter have the same hours of employment on each workday while the former have different, but regularly assigned, hours of work on days of their workweek, does not affect the application of the cited Articles. For Article III, Section 20-a states: “This rule is for the sole purpose of determining the compensation for employees who are required to work on their assigned rest days. . . .” (Emphasis ours.)

Award 7828 is dispositive of the issue in this case.

For the foregoing reasons and conclusions we will sustain the Claim.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.