

Award No. 11433

Docket No. TE-9745

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. (a) Carrier violated the agreement between the parties when, at Kansas City, Missouri, on February 22, 1956, (Washington's Birthday), it worked L. E. James his regular assignment of eight hours and paid him only for three hours.

(b) Carrier be required to compensate L. E. James for an additional five hours at the time and one-half rate.

2. (a) Carrier violated the agreement between the parties when, at Des Moines, Iowa, on February 22, 1956 (Washington's Birthday), the first-trick telegrapher's position was not filled (blanked) and the third-trick telegrapher worked overtime performing work of the first-trick and permitted an employe not covered by the agreement to perform work of the first-trick telegrapher by blocking trains.

(b) Carrier be required to compensate R. R. Hurd, first-trick telegrapher, for eight hours at the time and one-half rate and C. E. Kivetts, third-trick telegrapher, for 30 minutes at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At Kansas City, Missouri, the Carrier has a large freight yard designated on the timetable as Ohio Avenue; at the yard office at this location there are two positions under the Telegraphers' Agreement, the first-trick with assigned hours 4:01 A. M. to 12:01 P. M., assigned rest days Sunday and Monday, position not filled on Sunday rest day and relieved on the Monday rest day. The second-trick position has assigned hours 4:01 P. M. to 12:01 A. M., seven days per week, but we are not directly concerned with the second trick in the instant case. Claimant L. E. James has been the regularly assigned occupant of

However, even if Claimant Kivett had been authorized to work 30 minutes overtime on February 22 (which is denied by the Carrier) in order to complete the work of his assignment, this situation would not validate claim in behalf of Hurd for eight hours at the time and one-half rate (Claim No. 2). In the first place, the record shows that Claimant Hurd was notified on February 20 that his assignment would not work Wednesday, February 22, account holiday. In the second place, Hurd did not perform any service on February 22 (Washington's Birthday). In the third place, Rule 8, Section 2 - I(A), previously quoted herein, applies only to time worked on the specified holidays — there is no rule for payment of eight hours at the time and one-half rate for time not worked on a holiday.

In this connection we have shown below Award No. 26, Docket No. 26 of Special Board of Adjustment No. 117, dated July 17, 1956, Order of Railroad Telegraphers versus Missouri Pacific Railroad, wherein the Board with the assistance of Livingston Smith, Chairman, handed down the following award:

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to properly compensate D. H. Magness for November 25, 1954, (a holiday).

2. Carrier shall be required to compensate D. H. Magness for 8 hours at the time and one-half rate of pay applicable to the second shift Telegrapher-Clerk position, Batesville, Arkansas, for November 25, 1954, (a holiday).

OPINION OF BOARD: This claim concerns request of claimant for eight hours at punitive rate for work allegedly improperly performed during the assigned hours of his regular assignment for November 25, 1954, such day being a holiday within the meaning of the effective agreement. Claimant filled a regular assignment on second shift of a 7-day position, which included the Holiday in question as a part thereof, with assigned hours 1:00 P.M. to 9:00 P.M. On the day prior to the date in question, the claimant here received telegraphic notice that he was not to cover his assignment on the day following.

This claim arises by virtue of the fact that certain work was allegedly performed which was a part of claimant's assignment and performed during the hours thereof by the occupant of the first trick telegrapher position at the station in question.

It is asserted by the Organization that Rule 8, Section 1(e-1), requires that all positions have assigned hours of service, which in this instance included those hours of 1:00 to 9:00 P.M., including Sundays and holidays, and that 36-hour notice was required to change the starting time of an assignment, and that under Rule 9 the claimant here was entitled to perform the work of the position, and that he was thus improperly denied his contractual right to perform such work, particularly in light of the fact that the Carrier here was unable to completely blank the claimant's position.

The respondent here asserts that this claim is not valid for the reason that the claimant here was given advance notice that his services would not be required on the holiday in question, and that he received holiday pay at the pro rata rate on a holiday when no services were actually performed by him, as required by Article II, Section 1, of the Agreement of August 21, 1954.

It was pointed out that Rule 8-1(e-1) refers to starting time of a position and that in cases where, as here, elimination of all work on holiday does not have the effect of changing the assigned starting time of a position.

It is contended that a holiday is a day on which the Carrier may or may not, as its requirements demand, use an employe on his regular assignment.

The respondent further contended that the work performed by the first trick telegrapher was not work that was ordinarily performed by the occupant of the second trick position; thus, it could not be said to belong to the assignment of the second trick position which was held by the claimant here.

The work in question here was performed on a holiday. The position which the claimant filled was a 7-day position, including Sundays and holidays. Where the work week of an assignment includes a holiday, the holiday may be blanked. See Rule 8, Section 1(f). A holiday is a day which may or may not be assigned, depending on the desires and needs of the Carrier. An occupant of a position is required to report and cover his assignment on a holiday unless otherwise notified not to do so, but there is no requirement in the rule that an employe be given a specified number of hours' notice not to cover his position on a holiday.

Rule 8-1(e-1) has to do with the starting time of a position — it does not pertain to holidays.

Here, the claimant was affirmatively notified not to cover his position, thus blanking his assignment for the day. The work complained of here was not work of the assignment, even though it was performed during the period which included the assigned hours of claimant's position. The work in question (which was due to a delay in the train arrival) was not work which required the Carrier here to call the claimant to perform, nor was it work which could not properly be performed, in this particular instance and under the facts of record here, by the occupant of the first trick telegrapher's position. Insofar as he, the first trick telegrapher, was concerned, it was work which the Carrier could properly assign and require him to perform on an overtime basis.

For the reasons stated, claim here is without merit.

FINDINGS: The Special Board of Adjustment No. 117, 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 Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier did not violate the effective agreement.

AWARD

Claim denied.

It will be observed that Award 26 is identical in principle to claim No. 2 of the instant case. In its position, the Employees in Award 26 made the following statement:

"The facts in this dispute show that the Carrier was unable to completely blank the position and attempted to cover its work by the assignment of the duties of the Second Shift position on an overtime basis to the occupant of the First Shift Telegrapher-Clerk."

A comparison of the two cases shows that they are identical as to rules and essential circumstances with the exception that in Award 26 claimant was required to work 40 minutes overtime, or into the following shift to take care of a late train; whereas, in the instant case no overtime was necessary or authorized, claimant simply decided of his own volition to work an additional 30 minutes to complete his assignment.

CONCLUSION

A review of all the foregoing clearly shows that:

1. Claimants were allowed eight hours pro rata holiday pay for Washington's Birthday in accordance with Article II of the August 21, 1954 Agreement and there is no dispute between the parties concerning this allowance.

2. Rule 10 (Guarantee) does not apply on holidays, i.e., there is no requirement that any position must be worked on a holiday.

3. This Division has held that any position, whether it be a five, six or seven-day position, may be blanked on a holiday, with impunity, because a holiday within a work-week creates an exception to the five-day work week rule. (Awards 5668, 6385, 7033, 7134, 7136, 7137, 7294.)

4. Claimant in Claim No. 1 was compensated for time worked February 22, under provisions of Rule 8, Section 2-I(B), which provides for payment of "time and one-half with a minimum of three hours." Claimant actually worked a total of three hours (4:30 A.M. to 7:30 A.M.) — see Carrier's Exhibit "A". The Employees have recognized that when a six-day position is blanked and the incumbent is used on a portion thereof during the hours of his week day assignment, proper payment is "time and one-half with a minimum of three hours" — see settlement of 0-265, Pages 5 and 6 of this Submission.

5. Rule 8, Section 2-I, covers payment for time worked on holidays. Position of claimant involved in Claim No. 2 was blanked Feb-

ruary 22 in accordance with notice of February 20 and he did not work February 22 (Washington's Birthday).

6. Telegrapher properly may be required to remain on duty and work into the next shift to complete the work of his assignment. Such service on his own assignment does not constitute service on the succeeding assignment—see Award 26, Special Board of Adjustment No. 117.

7. Claims are not supported by schedule rules and should be denied.

Carrier's Exhibit "A" is attached hereto and made a part hereof as if fully set forth herein.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant James occupied the position of telegrapher on the first trick at Kansas City, Missouri, 4:01 A.M. to 12:01 P.M., Tuesday through Saturday, with rest days Sunday and Monday. The claim on his behalf is based on the assertion that he worked his usual eight hours on Washington's Birthday, Wednesday, February 22, 1956, a recognized holiday under the applicable agreement, and was paid only for three hours at the time and one-half rate. Carrier asserts that on the holiday mentioned Claimant James worked from 4:30 A.M. to 7:30 A.M. and was paid at the time and one-half rate for the three hours in addition to his eight hours for the day.

We are of the view that the record establishes that Claimant James worked his regular assignment of eight hours on Washington's Birthday, February 22, 1956, and that, as a result, he is entitled to the compensation claimed. If the position of Claimant James was to be blanked, as Carrier asserts it intended, there is no evidence that any action was taken to do so. The bulletin dated July 14, 1955, which had advertised the position filled by Claimant James did not except holidays.

At Des Moines, Iowa, Claimant Hurd was the regularly assigned telegrapher on the first trick 7:30 A.M. to 3:30 P.M., Monday through Friday, and Claimant Kivetts was the regularly assigned third trick telegrapher, 11:30 P.M. to 7:30 A.M., Friday through Tuesday. Hurd was notified that his position was blanked on February 22, 1956 on account of the Washington's Birthday holiday and he did not work that day.

The claim for Kivetts is based on the assertion that he was unable to complete all the work on his trick beginning on February 21, 1956 until 8:00 A.M. on February 22, 1956. With respect to Claimant Hurd, the Employees contend that his position was improperly blanked on the holiday mentioned and that other persons performed the work of his position on that day.

The record indicates that the claim for Kivetts is sustained factually. In this connection, Circular No. 1 bars consideration of the statements submitted for the first time in "Carrier's Oral Argument."

The record also shows that the work which kept Kivetts the additional thirty minutes on February 22, 1956 was of such nature that he "could not

release himself from duty until that work was completed unless he had permission to do so." Under these circumstances, we cannot say that such work would have been performed by Claimant Hurd if his position had not been blanked; and the record does not support the view that his position was otherwise worked. There is no basis for finding that Rule 7 was violated or that Hurd's position was improperly blanked. See Awards 8539, 10594.

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 insofar as indicated in the Opinion.

AWARD

Claim sustained with respect to Claimants L. E. James and C. E. Kivetts and denied with respect to Claimant R. R. Hurd in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11433 - DOCKET TE-9745

We dissent to that portion of the award which holds:

"We are of the view that the record established that Claimant James worked his regular assignment of eight hours on Washington's Birthday, February 22, 1956, and that, as a result, he is entitled to the compensation claimed. If the position of Claimant James was to be blanked, as Carrier asserts it intended, there is no evidence that any action was taken to do so. The bulletin dated July 14, 1955, which had advertised the position filled by Claimant James did not except holidays."

The Carrier submitted as its Exhibit "A" a copy of the time slip made out by Claimant James for February 22, 1956. Under the caption "Actual Time" on Duty, it shows "three hours". This was filled in by the Claimant. The Organization attempted to impeach this evidence by the submission of a duplicate time slip which showed under the same caption, eight hours on duty. However, in submitting the duplicate time slip, Petitioner was caught in an oversight which completely discredited their time slip as being authentic.

These matters were dealt with in detail for the Referee's benefit. This was the extent of the evidence submitted, showing the duration of Claimant James tour on that date. It is a little difficult to understand how the Majority could make the assertion "the record establishes that claimant James worked his regular assignment of eight hours" on the basis of such discredited evidence.

For these and other reasons, we dissent to that portion of the claim involving Claimant James and also Claimant Kivetts. We concur in that portion of the Opinion which denies the claim of Claimant Hurd, as there was no showing that his position was improperly blanked.

/S/ W. F. Euker
W. F. Euker

/S/ R. E. Black
R. E. Black

/S/ R. A. DeRossett
R. A. DeRossett

/S/ G. L. Naylor
G. L. Naylor

/S/ W. M. Roberts
W. M. Roberts