

Award No. 11549
Docket No. TE-9923

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— COAST LINES —

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

1. The Carrier violated the Agreement between the parties when it refused and continues to refuse to compensate L. D. Forney at the time and one-half rate for work performed on his rest day, Saturday, October 27, 1956; and

2. The Carrier shall be required to pay L. D. Forney the difference between the pro rata and time and one-half rates for work performed on Saturday, October 27, 1956.

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

The Carrier maintains a position of telegrapher-clerk at Wasco, California, with assigned hours 1:30 P. M. to 9:30 P. M. For an extended period of time this position was assigned five days per week Monday through Friday with Saturdays and Sundays as rest days. The position was not filled on Saturday and Sunday.

On Tuesday, October 23, 1956, L. D. Forney, occupant of the position in question, was notified that, effective October 27, 1956, the position would be assigned six days each week with Sunday and Monday as assigned rest days but the incumbent would be required to work a call each Sunday to meet train No. 7. Relief on the Monday rest day was thereafter provided by the incumbent of a regularly assigned rest day relief assignment.

Claimant Forney, in his work week which began to run Monday, October 22, 1956, was required to work Monday, October 22 through Saturday, October 27, 1956, a total of six consecutive days, or 48 hours work week. He was paid 8 hours at the pro rata rate for Saturday, October 27, 1956.

In handling on the property, the Employees seemingly relied upon the provisions of Article III, Section 13 of the current Telegraphers' Agreement that "The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work" as support for their position in this dispute that the claimant Forney's new work week did not "start to run" until the first day on which the assignment was bulletined to work following notice of change of assigned rest days, and notwithstanding that such notice designated the effective date of the change, but presented no argument in support thereof. Careful examination of the language contained in that rule will, however, plainly reveal that it simply defines the term "work week", and presents nothing which could possibly support the Employees' position in the instant dispute. In discussing an identical rule defining the work week of a regular assigned employee, the members of Special Board of Adjustment No. 136 held in their Case No. 14 that:

"There is no prohibition in the rules against assigning an employee to COMMENCE WORK ON SOME DAY OTHER THAN THE FIRST DAY OF THE WORK WEEK." (Emphasis supplied.)

The claimant, Forney, moreover, not having performed more than five days' or 40 hours' service in a work week as previously shown hereinabove, Sections 19-a and 19-b of Article III of the current Agreement, also cited by the Employees, likewise lend no support to the Employees claim in the instant dispute.

In conclusion the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the agreement rules in effect between the parties to this dispute and should be denied.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserve the right to submit additional facts, evidence and arguments as it may conclude are required in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs, presented by the 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 presented in this dispute has been before the Board on many occasions. Awards 5586, 8077, 8145, 9962, 10530, 10674, 10901, 11036, 11322 among many others have all sustained the position of the Organization.

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 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 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 28th day of June 1963.