

Award No. 11899
Docket No. TE-10644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY
(Wheeling and Lake Erie District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago and St. Louis Railroad (Wheeling & Lake Erie District), that:

1. The Carrier violated the parties' Agreement when it failed to properly compensate Blake Dolan for service performed on February 22, 1957, one of the designated holidays.
2. The Carrier shall, because of the violation set forth above, be required to pay Claimant Dolan a day's pay at the time and one-half rate, in addition to that paid for service performed on February 22, 1957.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective, as to rules, February 1, 1952, and as to rates, effective February 1, 1951, and as revised.

Blake Dolan, Claimant, is the regular occupant of a Rest Day Relief Position (No. 2) at Ironville Tower, with rest days of Friday and Saturday.

On February 22, 1957, Washington's Birthday, and one of the designated holidays covered by the rules, he was required to work on the second shift position at Ironville Tower for which service he was compensated at the time and one-half rate.

Claimant Dolan in his letter of April 17, 1957, to Chief Dispatcher Counts, attached as ORT Exhibit No. 1, took the position that he was entitled to a day's pay at the time and one-half rate for service performed on February 22, 1957, one of his assigned rest days, and that he was also entitled to a day's pay at the time and one-half rate for

"Except on **holidays** and **assigned rest days** regular assigned employes will receive one day's pay within each 24 hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location."
(Emphasis ours.)

Rule 10 is obviously inapplicable and cannot be considered as defining or construing the terms "holiday" and "rest day" because such days are exceptions to the application of the rule. Assuming (but not admitting) Rule 10 could be used as the General Chairman urges, it is at once apparent that instead of separating the two types of days it groups them together as being the measure of a day to which no guarantee applies.

Projecting the Employes' absurd argument regarding Rule 10 a step further, if holidays and rest days are to be considered separately under this rule then a day which is a holiday would have to be examined further to see if it were a rest day before any determination could be made that the guarantee was inapplicable thereto.

A claim for dual penalties was made by the Organization in Docket TE-3791. In Award 3780 rendered thereon, this Board said:

"To permit the claimant here to collect time and one-half for the hours worked in his regular assignment would be in effect permitting him to claim two penalty payments on the eight hours relief work he did, one, on the theory that it was work performed outside of his regular hours of duty and, two, that it was work performed in excess of eight hours. This would be inequitable, and we know of no award which has so interpreted any similar agreement."

In summary, it is the Carrier's position that the allowance of punitive rate of pay satisfies the provisions of the rules cited by the Employes and that no additional payments are due. The claim is inequitable and without merit. It should therefore be denied.

All that is contained herein is either known by or available to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The following rules of the agreement between the Carrier and The Order of Railroad Telegraphers are under consideration in the present controversy:

"RULE 8 (k) — SERVICE ON REST DAYS

"Employes required to perform service on their assigned rest days within the hours of their regular daily assignment shall be paid on the following bases:

"On seven-day positions: At the rate of time and one-half with a minimum of eight hours."

* * * * *

“RULE 9—SERVICE ON HOLIDAYS

“Time worked within the hours of the regular daily assignment on the following holidays; namely, New Year’s Day, Washington’s Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid on the following bases:

“On seven-day positions: At the rate of time and one-half with a minimum of eight hours. . . .”

It is urged by the Petitioner that each of these rules is a self completing rule; that the pay provisions of one rule does not offset the pay provisions of the other and that the agreement must be interpreted in toto applying the rules to the facts.

It is the Carrier’s position that the single allowance of the time and one-half rate to the Claimant satisfied the penalty provisions of both Rules 8 and 9, that no other nor additional payment was intended by the agreement and if paid would result in the payment of overtime on overtime.

Carrier has bound itself by the Agreement to pay compensation under two separate rules of the Agreement. Where similar agreements were involved, that this does not constitute the payment of overtime on overtime has been resolved by prior awards of this Board, cited herein. We are not here to determine whether or not the provisions of this agreement resulted in an unequitable distribution; if there are inequities, that can be corrected by negotiation. The questions presented here have been considered and determined in three prior awards of this Board—Award 10541 (Sheridan); Award 10679 (Moore) and Award 11454 (Miller). We do not believe these awards are palpably erroneous.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.

**CARRIER MEMBERS' DISSSENT TO AWARD 11899,
DOCKET TE-10644**

The Carrier Members' Dissent to Award 10541 is incorporated by reference as the dissent in this case. We hold this award is palpably erroneous for the reasons fully explained in the aforementioned dissent.

W. F. Euker

R. E. Black

R. A. DeRossett

G. L. Naylor

W. M. Roberts