Award No. 12319
Docket No. TE-11153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Colorado and Southern Railway, that:

1. The Carrier violated the Agreement between the parties when it failed or refused to compensate Telegrapher H. L. Taylor, 1st shift Prospect (Denver) Colorado, at the time and one-half rate for service performed on Sunday, April 20, 1958, a rest day of the position occupied for which he received the pro rata rate.

2. The Carrier shall, because of the violation set forth above, compensate H. L. Taylor the difference between the straight time rate paid and the time and one-half rate due for work performed on his assigned rest day.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective October 1, 1948, including changes and agreed-to interpretations as of the reissue date, January 1, 1955, and as amended, including rates of pay effective December 3, 1954.

H. L. Taylor, Claimant, is the regular occupant of the first shift Telegrapher position at Prospect (Denver), Colorado, and had, prior to the instant claim, a work week of Tuesday through Saturday, Sunday and Monday rest days. Service, duties and operations were necessary seven days per week on the position occupied by Taylor.

The record shows that effective April 19, 1958 Claimant's rest days were changed from Sunday and Monday to Monday and Tuesday. As a result of such change Claimant, in his work week beginning on Tuesday, April 15 (the first day on which the assignment was bulletined to work) worked that day; and worked Wednesday, April 16; Thursday, April 17; Friday, April 18; and Saturday, April 19, and, having completed the five work days of the position occupied, he was then entitled, under applicable rules, to the two rest days of the position, namely, Sunday, April 20, and Monday, April 21. However, he was not permitted to observe Sunday, April 20, the first rest day of the work week of which he had worked the five work days thereof. Instead, pursuant to notices (not contained in the record) he was required to work this rest day for which he was paid the straight time rate.

March 17, 1951, by the notice of March 12, 1951. In other words, Saturday and Sunday, March 17 and 18, 1951, were work days of his new work week. For comparable results, see Awards 5854, 5998 and 6211 of this Division.

* * * * *

It is the Organization's thought that changing claimant's rest days did not create a new assignment and that consequently he does not come within the excepted category of an employe moving from one assignment to another. Of course, before the question of an exception becomes material, the situation must exist to which the exception has application.

The quoted language of Rule 9(d), insofar as overtime is concerned, has application when an employe has worked in excess of forty straight time hours in any work week or when he has worked more than five days in a work week and, in doing so, has worked on either the sixth or seventh days thereof, or both. **Since claimant's old work week ended after he had completed his work on March 16, 1951, and since his new work week started on March 17, 1951, he performed no work within the meaning of the foregoing provisions.** Consequently, there is no situation to which the exceptions could apply and therefore no need exists for discussing whether or not the situation here presented comes within the language thereof.

In view of what we have here said, we find the claim to be without merit." (Emphasis ours.)

These findings are similarly appropriate here. Claimant Telegrapher Taylor's old work week ended after he completed work on Friday, April 18, 1958. His new work week became effective on Saturday, April 19, and the date of this claim, Sunday, April 20, was not a rest day, nor was it the sixth day of his then effective work week.

In conclusion, the Carrier will suffice to say that the claimant is not entitled to the payment sought.

OPINION OF BOARD: The issue presented by this dispute has been before the Board on numerous occasions: Awards 7319, 9962, 10497, 10530, 10674, 10744, 10901, 11036, 11322, 11549, 11991, 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, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 6th day of March 1964.