

Award No. 12453
Docket No. TE-9968

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad that:

1. Carrier violated the agreement between the parties hereto when it failed to properly compensate:

(a) Telegrapher C. F. Dees for work performed on July 4 and July 10, 1956;

(b) Telegrapher A. J. Smith for work performed on December 25, 1956;

(c) Telegrapher J. A. Higley for work performed on December 25, 1956;

2. Carrier shall now be required to compensate these employees in accordance with the rules of the said agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto, bearing an effective date of August 1, 1947, reprinted with a current Wage Scale November 1, 1956, all applicable provisions of which are hereby invoked. Such rules or provisions thereof, which specifically apply in these disputes, will be quoted as the Employees' position is developed.

CLAIM 1-(a)

Claimant C. F. Dees was regularly assigned to the second trick telegraph position at Duncan, Oklahoma, working 3:59 P.M. to 11:59 P.M. Thursday through Monday, assigned rest days Tuesday and Wednesday, rate of pay \$2.01 per hour. During the first payroll period in July, 1956 i.e.: July 1 to 15 inclusive, Dees worked the Duncan assignment 8 hours every day (including his rest day Tuesday, July 3rd, and the rest day-holiday Wednesday July 4)

All during the time we have had a rest day rule, no claims or contentions have been made by the employees that they should be paid 16 hours at time and one-half when they were required to work their rest day when such rest day fell on a holiday.

The employees are asking your Board at this time to write a rule into the present agreement providing for 16 hours at time and one-half instead of eight hours at time and one-half for working on a holiday when a holiday falls on their rest day.

Your Board has consistently refused to sustain claims for double penalties. In this respect, attention is directed to the following language contained in the Opinion of Board in Award 5423:

"The rule, so well established that it does not require citation of Awards to sustain it, is that penalties cannot be pyramided."

The question which your Board has been asked to resolve by claimants in their favor is directly opposed to this principle. The employees would have your Board take two unrelated rules of the agreement and read them in such combination that unwarranted and unauthorized pyramided penalties result.

In view of the fact that Rule 13 very definitely states that there shall be no overtime on overtime, Carrier submits that claimants were properly paid for their services on each day and we respectfully request your Honorable Board to deny the claim of the employees.

OPINION OF BOARD: Claimants, three in number, make claims for additional compensation under the Holiday Pay Rule, rules governing pay for service on rest days, and service by regularly assigned employees performing relief work.

The Holiday Pay Rule provides compensation to be paid at the rate of time and one-half for a minimum of eight hours, for time worked. The rest day rule, "Rule 16 (m)" provides that employees required to perform service on their assigned rest days shall be paid at the rate of time and one-half with a minimum of eight hours. Rule 17 provides that regularly assigned employees, required to perform relief work will be paid pro rata for time worked within the hours of their regular assignment, and time and one-half for time worked outside the hours of his regular assignment, with a guarantee of eight hours.

The position of the employees is stated in their submission as follows ". . . Carrier should be compelled to assume simultaneous 'punitive' payments to its employees, required under two or more provisions of the agreement, whenever it simultaneously compels its employees to assume two or more of the 'punitive' conditions permitted in those provisions. . . ."

Previous awards of this Division Awards 10541, 10679, 11454, and 11899 have held that in the application of the Holiday Pay Rule, and the Rest Day Rule, if both rules were applicable, the payments would be made in accord with both rules, and the payment of eight hours at time and one-half would not obviate a similar payment pursuant to a second rule, etc.

The vigorous dissent to Award 10541 sets forth the argument against the pyramiding of penalty payments. The dissent dwells at length on the subject of a single employment activity for which two penalty payments are required under two separate provisions of the contract.

The dissent states that such pyramiding was not the intention of the parties, all of which was undoubtedly considered in the previous awards cited. The Carrier argues that the result is unreasonable, as there was but one employment activity. The contract makes no mention of a single employment activity. The contract does provide for specific payments under certain conditions, and as in the recent previous awards, a sustaining award is warranted.

In the instant claim 1(a) and 1(c) compensation is requested for service by regularly assigned employees required to perform relief work. Such compensation is claimed at premium rates in addition to premium compensation paid for the identical period for Holiday and Rest Day service. This type of claim had not previously been considered in Awards 10541, 10679, 11454, and 11899, and in practice, had not heretofore been paid under the conditions here existing.

Rule 17 paragraphs (a) and (d) read as follows:

"(a) A regularly assigned employee will not be required to perform relief work except in cases of emergency. When required to do so, outside the city or terminal in which located, he will work the hours of service of the position on which relieving, with a guarantee of not less than he would have earned (including commissions) had such interruption not taken place. Payment for time worked on the relief position will be at pro-rata rate for time worked within the hours of his regular assignment, and time and one-half for time worked outside the hours of his regular assignment. Except as provided in paragraph (d) of this rule, he will be guaranteed not less than a total of eight (8) hours for each day away from his assigned position. Pro-rata rate will be paid for time traveling to and from the relief position. The hourly rate paid under this rule will be based on the higher rate of two positions. Three dollars (\$3.00) per day will be allowed for expenses while away from regular assigned station."

"(d) A regularly assigned employee performing relief service under this rule will retain the assigned rest days of his regular assignment. If he is relieved on the regular assigned rest days of the emergency position, he will not be paid for those days unless, by reason of the change, he works less than five (5) days in any seven (7) day period, in which case he will be paid for time lost except for any seven (7) day period in which a holiday falls. If the employee performs service on any holiday, he will be paid at the time and one-half rate. (See Memo. 23, page 106, for Application Rule 17 (a) to Relay Division)."

Claim 1(a), in addition to holiday and rest day pay, seeks pay under Rule 17, (the relief rule) for work on July 10, 8:00 P.M. to 12:00 midnight, for four hours at straight time, and for the period July 11, 12:00 midnight to 4:00 A.M., time and one-half, for four hours.

Claim 1(c), seeks compensation under Rule 17 (the relief rule) for December 25 at time and one-half for eight hours, in addition to eight hours at time and one-half under the holiday pay rule.

The Carrier argues that Section (d) of Rule 17 reading: "If the employee performs service on any holiday, he will be paid at the time and one-half rate." anticipates the claim and makes provision for the pay to be received.

Previous awards cited have held that service on a holiday, at the same time as a rest day will yield in excess of the time and one-half here provided. Thus that part of Rule 17 Section (d) does not limit the combination of rest day and holiday service. It does by the language limit the combination of holiday and relief service to a single payment of time and one-half for the holiday service. Claim 1(a) must be sustained as to holiday pay and rest day pay, but denied as to relief pay. Claim 1(b) must be sustained. Claim 1(c) must be sustained as to holiday pay but denied for additional pay because of relief service. The rule itself spells out the combined pay for holiday and relief service, and specifies the same to be at the time and one-half rate.

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

Claims sustained as per the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12453 DOCKET TE-9968

(Referee Sempliner)

We dissent. See Carrier Members' dissent to Award 10541.

G. L. Naylor
W. M. Roberts
R. E. Black
W. F. Euker
R. A. DeRossett