Award No. 12654
Docket No. TE-11348

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

1. The Carrier violated the Agreement between the parties when, on September 29, 1957, it required extra telegrapher D. R. Warren to work six days in his work week and thereafter refused and continues to refuse to pay him at the overtime rate for work performed in excess of 40 hours or five days in his work week, and

2. The Carrier shall now be required to pay Claimant D. R. Warren the difference between the pro rata and time and one-half rates.

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

H. W. Crawford, regularly assigned to Rest Day Relief Position No. 3 at Sealey, Texas, is assigned as follows:

Saturday – Sunday	7:00 A. M. to 3:00 P. M.
Monday – Tuesday	3:00 P. M. to 11:00 P. M.
Wednesday	11:00 P. M. to 7:00 A. M.

Thursday – Friday rest days.

All of the work performed is at Sealey.

On Sunday, September 29, 1957, Mr. Crawford was not available to relieve J. E. Sheffield, regular occupant of the 7:00 A. M. to 3:00 P. M. position because he was used to perform relief work as a train dispatcher.

D. R. Warren, extra telegrapher, worked at Elizabeth, La., from Monday, September 16, through Friday, September 27, 1957, as telephoner-clerk relieving regular incumbent J. M. Stepps for vacation.

The greater of the penalties claimed in the instant dispute has been allowed, i.e., payment of eight hours to Claimant J. E. Sheffield in lieu of four hours to Claimant D. R. Warren.

In conclusion, the Carrier respectfully asserts that (1) the claim of the Employes in behalf of Claimant D. R. Warren is entirely without merit or support under any Agreement rule in effect between the parties and (2) the original claim constituted a double or pyramided claim in behalf of two employes for the same alleged violation, in view of which the instant claim should be denied in its entirety.

OPINION OF BOARD: This case involves a situation where Claimant Warren had already worked 40 hours in a given week, filling in for the regular incumbent, who was on vacation. The workweek consisted of eight hours per day, Monday through Friday, inclusive, with Saturday and Sunday as rest days. The Petitioner did not work Saturday, but was required to work Sunday on another position. He maintains that, having worked 40 hours in his workweek, under Article XX, Section 17, he was not available as such for a subsequent vacancy in the same workweek. Hence, when he was required to work on his rest day, Sunday, he was entitled to payment at time and a half in accord with the provisions of Article III, Sections 20-b and 20-e.

The original claim submitted by the Organization consisted of two parts. The first involved Claimant Sheffield, the regular incumbent of the position, worked by Claimant Warren on Sunday. Sheffield asserted that since there was no extra available employe, he, as the regular incumbent, should have been required to protect this position. Since he was not called, he filed for 8 hours at the overtime rate. The claim was settled on the property per agreement of the Organization and the Carrier by paying Claimant Sheffield for 8 hours at the pro rata rate.

The second portion of the original claim concerns itself with Petitioner Warren, who likewise has filed for 8 hours' pay at the overtime rate.

The record in this case is clear on two essential points, one being that we have two Claimants filing for the same violation, the second being, that the Carrier violated the agreement, both insofar as it concerned Sheffield and Warren. We now, however, are faced with a double penalty. It is to be re-emphasized that a compromise was reached on the property, wherein Claimant Sheffield was paid at the pro-rata rate for 8 hours. Claimant Warren has been paid at the pro-rata rate for 8 hours. By the Organization agreeing to the pro-rata rate for Sheffield, it has effectively accepted an accord and satisfaction. We are not unmindful of the awards cited to us by the Organization, and we make specific reference to Awards 10391, 10803, 6971, 11859 and 12043. It is our judgment that these cases are distinguishable from the instant case in that there was no issue of a double or pyramided claim, but merely the payment of overtime for work in excess of 40 hours per week. There is ample precedent already established in the various awards promulgated by this Board precluding the assessment of the double penalty, and we, therefore, are constrained to agree with them. (See Awards 8004, 8013, 6869.) The greater of the penalties claimed has been granted, that is, the payment of 8 hours to Claimant Sheffield, rather than the 4 hours to Claimant Warren, and we find this consonant with Awards 7370, 5423, 5549, inter alia.)

We therefore deny the claim.

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 not violated.

AWARD

Claim denied for the foregoing reasons.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.