

Award No. 12722
Docket No. TE-13733

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, 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 & Southern Railway, that:

1. Carrier violated the parties' Agreement when in changing the assigned rest days of R. H. Rope, regular assigned incumbent, second shift Telegrapher position, Trinidad Yard, Trinidad, Colorado, it suspended him from work on Tuesday, January 9, 1962.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate R. H. Rope for one day's pay at the pro rata rate of \$2.54 per hour.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective October 1, 1948, and as otherwise amended.

R. H. Rope, hereinafter referred to as claimant, was, prior to January 7, 1962, the regularly assigned occupant of the second shift telegrapher position in Trinidad Yard Office, Trinidad, Colorado. As such, he had assigned hours of 3:59 P. M. to 11:59 P. M.; a work week Tuesday through Saturday, Sunday and Monday rest days.

The Colorado & Southern Railway, hereinafter referred to as Carrier, is the respondent.

It appears from the record that due to a decrease in service requirements at Trinidad Yard, Carrier, on a date not shown in the record, discontinued the third shift telegrapher's position at Trinidad Yard, and concurrent therewith notified claimant that effective January 8, 1962, the hours of his position would be changed to 1:00 P. M. to 9:00 P. M. and the rest days thereof would be changed from Sunday and Monday to Monday and Tuesday. (See ORT Exhibit 8, page 1, Carrier's letter.) In this connection it may be noted that Monday, January 8, was the second rest day on the claimant's position.

SPECIAL BOARD OF ADJUSTMENT NO. 305

/s/ Donald F. McMahon
Donald F. McMahon - Chairman

Dissenting

R. K. Anthis
Organization Member

/s/ G. W. Johnson
G. W. Johnson
Carrier Member

St. Louis, Missouri,
September 25, 1959"

In conclusion, the Carrier urges that your Board not jeopardize the right of Management under pertinent rules of the Agreement to change rest days and work weeks to meet diminishing business needs and changing service requirements, except as the Organization can definitely show that the provisions of some agreed-to rule, understanding or well-established practice positively prohibits the Carrier so doing. The Carrier, in the instant circumstances, most assuredly was not in violation of any part of any agreement in effect on the property of the Carrier in so doing here.

The evidence herein and herewith presented conclusively shows, and the Carrier respectfully reiterates, that the instant claim is completely devoid of agreement substantiation, therefore, should, for the reasons summarized herein, be unequivocally denied.

OPINION OF BOARD: Contention in this case arose out of the change of assigned rest days of R. H. Rope, Carrier's second shift Telegrapher at its Trinidad Yard, Trinidad, Colorado.

Claim was made this change suspended him from work on Tuesday, January 9, 1962 in violation of Rule 4 and Rule 11, Section 1 (a) of the agreement of October 1, 1948 between the parties hereto.

Facts of this case disclose that Carrier rearranged the rest days of the Claimant from Sunday and Monday to Monday and Tuesday effective January 8, 1962 thus giving Claimant at time of change three consecutive rest days and eliminating by this process one working day for the Claimant from that calendar year or one eight hour period from what would have been the next consecutive 40 hour period in violation of the rule:

"The company will establish, . . . for all employees, . . . a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; . . ."

The impact of the Carrier's action has been to violate Rule 11, Section 1 (a). The Claimant has been deprived of one eight hour day.

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 allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.

CARRIER MEMBERS' DISSENT TO AWARDS 12721 - 12722,
DOCKETS TE-11057 - TE-13733
(Referee Reagan)

For the reasons previously set forth in our dissent to Award 11474, we dissent to the Majority's decisions in these cases.

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