# Award No. 12798
# Docket No. TE-11773

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

Nathan Engelstein, Referee

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## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

1. The Carrier violated the parties' Agreement when it failed and refused to compensate A. Hetrick for eight (8) hours at the time and one-half rate for services performed by him on November 25, 1958, and when it suspended P. H. Hamel from work on November 25, 1958, C. Gambill from work on November 26, 1958, and W. H. Yuill from work on November 28, 1958.

2. The Carrier shall, because of the violation set out above, compensate A. Hetrick for the difference between the straight time paid and the time and one-half rate due for work performed on November 25, 1958, and

3. The Carrier shall pay P. H. Hamel a pro rata day's pay for November 25, 1958; C. Gambill a pro rata day's pay for November 26, 1958; and W. H. Yuill a pro rata day's pay for November 28, 1958, account suspended from work on assigned work days of their respective positions.

EMPLOYES' STATEMENT OF FACTS: The Agreement in effect on the dates involved in the confronting disputes was effective June 1, 1948, as amended.

At page 64 of said Agreement are listed the positions at Lafayette, Indiana, on the effective date of said Agreement. The listing reads:

| Location | Classification | Hourly Rate |
|---|---|---|
| Lafayette | First Trick Operator | $1.30 |
| | Second Trick Operator | 1.30 |
| | Third Trick Operator | 1.30 |

the application of the rule in the manner insisted upon must necessarily imply an automatic penalty, either in the form of pay for work not performed or a penalty payment for work performed, or both. Furthermore, the Employes' contentions are based on the fallacy that **individual employes** retain their former rest days beyond the effective date of a change in the rest days of the **position** and until the first work day of the new work week. There is no such implication, must less language, to support it in Rule 4¼(1) or in any other rule, and if the rules required that the rest days of individual employes were to be projected beyond the effective date of the change in position, there would be equal logic in projecting the former rest days of the individual employes ad infinitum. The Carrier fully complied with the rule, and no automatic penalty can be implied. Automatic penalties are not left to inference.

Rule 6(b) excepts assigned rest days, according to position held or to which entitled, from any guarantee of eight hours' pay within each 24-hour period. The rest days of "the positions held or to which entitled" were changed, effective November 24, 1958, and as concerns claimants Hamel, Gambill and Yuill, each of the days claimed were rest days of "the position held or to which entitled." The Carrier fully observed this rule, and the Employes have not shown to the contrary, nor have they disputed that the rest days of "positions held" were changed only after proper notice.

Rule 12(a) requires overtime payment only in the event an employe works more than five days in a work week. Rule 4¼ makes it clear that work weeks attach to positions, and not individual employes. Inasmuch as the rest days and work week of Claimant Hetrick were properly changed, effective November 24, 1958, and since November 25, 1958, was a work day of his new work week and the first day on which the assignment was bulletined to work, no overtime payment could accrue. The Carrier fully complied with this rule and no basis exists for penalty payment to Claimant Hetrick on a regularly assigned work day of the work week of his assignment.

The rules of the current agreement, standing alone, support the Carrier's position. The weight of the awards of this Division and of Special Boards of Adjustment disposing of similar claims supports the Carrier's position. The disposition of similar claims on the property, handled by the highest officers of the Carrier and the Organization designated to handle such matters, supports the position of the Carrier. These facts require a denial of the claims and a finding that the Carrier did not violate the agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The issue raised in these claims has been resolved many times by this Board. We find that Award Nos. 9962, 8868, 9243, 9548, 12600 and 11991, sustaining the claim, are determinative. Accordingly, we hold that the claim has merit.

**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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.