

Award No. 12990

Docket No. TE-11516

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violates the agreement between the parties when on dates subsequent to September 1, 1958 it requires H. W. G. Stuart and J. M. Flanders to work on assigned rest days at the pro rata rate, suspends them from work on assigned work days without pay, requires them to work overtime without pay; W. I. Brewster to work overtime without pay; W. L. Hurt and Mrs. J. W. Conway, regularly assigned employees, to perform relief work on other positions.

2. Beginning with September 16, 1958, Carrier shall compensate:

(a) H. W. G. Stuart for eight hours at pro rata on each Saturday and Sunday account suspended on assigned work days, 2 hours at the time and one-half rate for a call on each Monday, Thursday, and Friday account called to work in advance of regular starting time, 2 hours at time and one-half rate (overtime) and the difference between eight hours pro rata and eight hours at time and one-half rate on each Tuesday and Wednesday account working on rest days inside and outside of regular hours.

(b) J. M. Flanders for eight hours at pro rata on each Tuesday account suspended on assigned work days, for six hours at time and one-half rate on each Wednesday, Thursday, Friday and Saturday account called six hours in advance of regular starting time, the difference between eight hours pro rata and eight hours at time and one-half plus six hours at time and one-half rate (overtime) on each Sunday account service on rest days inside and outside of regular hours.

(c) W. I. Brewster for one hour at time and one-half rate Mondays through Fridays of each week account working one hour after regular quitting time.

(d) W. L. Hurt for eight hours at the time and one-half rate plus expenses for each day used off his regular assign-

ment and eight hours at pro rata on each work day of his regular assignment on which he is suspended.

(e) Mrs. J. W. Conway for eight hours at the time and one-half rate plus expenses for each day used off her regular assignment and eight hours at pro rata on each work day of her regular assignment on which she is suspended.

(f) All other employees adversely affected to be compensated on the same basis.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The station or office involved in this case is "NS" Telegraph Office (so designated because of the telegraph call letters) located at Beauregard Yard, the freight yard facility, at Mobile, Alabama.

The Carrier maintained continuous telegraph service, twenty-four hours per day for many years. This required three basic positions. In July, 1952, an additional position was established on the first shift with assigned hours of 6:30 A. M. to 2:30 P. M. This was a five-day position with work days Mondays through Fridays with Saturdays and Sundays as the days off. In April 1954, the starting time of this position was changed to 10:00 A. M. and in August 1957, it was changed to 9:00 A. M.

On September 1, 1958, the positions and assignments were as follows:

Shift	Assigned Hours	Rest Days	Regularly Assigned Occupant
1st	8:00 A. M. to 4:00 P. M.	Tues. & Wed.	H. W. G. Stuart
1st	9:00 A. M. to 5:00 P. M.	Sat. & Sun.	W. I. Brewster
2nd	4:00 P. M. to 12 Midnight	Sat. & Sun.	Mrs. J. W. Conway
3rd	12 Midnight to 8:00 A. M.	Sun. & Mon.	J. M. Flanders

In addition there was a regular rest day relief position assigned to the first shift (8:00 A. M. to 4:00 P. M.) on Tuesday and Wednesdays, second shift (4:00 P. M. to 12 Midnight) on Fridays and Saturdays, and to the third shift (12 Midnight to 8:00 A. M.) on Mondays with rest days Sundays and Thursday. W. L. Hurt was the regularly assigned occupant of this position. The third shift position was a six-day position not represented on Sundays.

September 1, 1958 was a holiday (Labor Day); the semi-monthly job bulletins were issued on the following day September 2, 1958. Under date of September 2, 1958, the Superintendent at Meridian issued four bulletins relating to positions at "NS" Mobile. Bulletin No. 35 was addressed to Stuart, Brewster, Hurt, Flanders and Conway and declared all positions, both regular and relief, at "NS" office abolished effective 11:59 P. M., September 15, 1958. Bulletin Nos. 36, 37, and 38 were addressed to covered employees on the entire seniority district and each advertised a vacancy on a position to be established at "NS" on September 16, 1958. The bulletins read as follows:

quirements have been amply met by the telegraphers in Beauregard Yard Office since September 15th. There is no obligation by agreement or otherwise that requires the Carrier to maintain unnecessary positions.

The claim is contrary to the agreement; to efficient and economical operations, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 15, 1958, there were four regularly assigned telegrapher positions at Beauregard Yard Office at Mobile, Alabama, and one regularly assigned relief telegrapher. On September 2, 1958, the employees were notified of the abolishment of their assignments, effective September 15, 1958. On the same date bulletins were issued advertising three positions to be established, effective September 16, 1958, in the same office, with different starting times for three of the new positions compared with the starting times of the previously existing positions, and different rest days for two of the positions.

As a result of the above procedure, one position was actually abolished. The successful applicants for the three positions allegedly established on September 16, 1958, were the occupants of three comparable positions in existence at the same location prior to that date.

The Agreement permits the starting time of positions to be changed (Rule 12); it provides for change of assigned rest days (Rule 17, Sec. 1 (k)); and it recognizes the right of the Carrier to reduce forces (Rule 19).

So far as the three positions allegedly established on September 16, 1958, are concerned, the Board is of the opinion that there was not a bona fide abolishment of the positions, but the net results were simply changed starting times for the three positions and changed rest days for two of the positions. (Awards 4522, 4523.) The Carrier could have changed the starting time, within the limits of Rule 12, without incurring a penalty. However, the Board has consistently held that where assigned rest days are changed, as result of which employees work more than five consecutive days computed from the previous rest days, they are entitled to time and one-half payment for the sixth or seventh day, and where, as result of such change, they work less than five days, they are entitled to pay for such days under the guarantee rule (Rule 5 of the applicable Agreement). Applying these principles to the situation herein, the Board finds that Claimant H. W. G. Stuart is entitled to the difference between straight time rate and time and one-half rate for Tuesday and Wednesday, September 16 and 17, 1958, and that Claimant J. M. Flanders is entitled to the difference between straight time rate and time and one-half rate for Sunday, September 21, 1958. The balance of the claim will be denied.

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 Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.