

Award No. 13006
Docket No. TE-12303

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Lines, that:

1. Carrier violated the agreement between the parties when it failed and refused to properly compensate B. H. Gleason for service performed on his assigned rest days, December 5, 19, 1959, January 2, 9, February 26, March 50, April 2 and 9, 1960.

2. Carrier shall be required to compensate B. H. Gleason for 8 hours at the time and one-half rate on each date set forth above and on each subsequent rest day on which required to perform service less the amount already paid for such dates.

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

Claimant B. H. Gleason was regularly assigned to a regular rest day relief position with the following assignments, all at Shreveport, Louisiana:

Sunday		7 A. M. to 3 P. M.
Monday		7 A. M. to 3 P. M.
Tuesday		3 P. M. to 11 P. M.
Wednesday		3 P. M. to 11 P. M.
Thursday		11 P. M. to 7 A. M.
Friday		Rest Day
Saturday		Rest Day

On Saturday (one of his assigned rest days), December 5, 1959, and on subsequent Saturdays, claimant Gleason was required to work less than 8

"* * * time and one-half with a minimum of two hours for each tour of duty on the rest day other than Sunday."

which was the same amount paid under IV.

In handling the case on the property the Employees relied on Award 7828. As indicated in the dissent by Carrier members, the basis for the decision is not clear, but it appears to be on the basis that the extra work required was during a portion of the hours which claimant was assigned to work on Sunday. That condition is not involved in the present case. Also, the rules involved were different from those in the present case, and the work required was extra service in addition to assigned telegraph service in the office involved. It was not a case where the office was closed during certain hours on the employee's rest day and he was called during such hours to provide telegraph service for a short period as in the present case. In the Carrier's opinion, the award does not support the present claim.

In the present case claimant was properly paid for actual time consumed with a minimum of two hours at time and one-half rate. The rules do not support the claim for a minimum day at time and one half under the circumstances involved, and Carrier respectfully submits that the claim should be denied.

OPINION OF BOARD: Claimant B. H. Gleason was assigned regular hours for being on and off duty: on relief assignments on Sundays and Mondays from 7 A. M. to 3 P. M. and on Tuesdays and Wednesdays from 3 P. M. to 11 P. M. and, to fill out the week, on Thursdays from 11 P. M. to 7 A. M.; Friday and Saturday were his assigned rest days. The relief positions he occupied on regular assignment each required a Sunday assignment of the regular week day hours of each such position.

On Saturday, December 5, 1959, and on a series of dates enumerated in the Statement of Claim, each of which was one of his assigned rest days, Claimant Gleason was required to work for less than 8 hours; for his work on these rest days the Carrier paid him under Article 6-4 of the Agreement. The Employees claim that he should have been paid under Article 7, Section 1 (m), II, A (1).

Carrier asserts that the Claimant, because he occupied a regular relief assignment, did not occupy a position requiring a Sunday assignment of the regular week day hours; and that Claimant had no regularly assigned week day hours. The Employees' position is that Claimant's regularly assigned week day hours included all twenty-four in the day; that Claimant occupied a position requiring a Sunday assignment of the regular week day hours of that position; that he was required to perform work on a series of his assigned rest days and was, therefore, entitled to pay for those days under Article 7, Section 1 (m) II, A (1).

The record supports the Employees' position. The Agreement makes no distinction between regular relief employees and other regular employees as to the application of this rule. Award No. 176, Special Board of Adjustment No. 100, cited by the Carrier, was apparently decided on the basis that while required attendance at an investigation is a service by an employee which requires compensation by the Carrier, it is not the kind of work compensable under the same rules as regular and normally assigned duties; in any case, Award No. 176 does not discuss the basic issues involved in this case before us.

Dispositive of the issues in this case are, among others, Awards 7828 and 11076, which involve factual situations basically the same as the one herein, and in which substantially the same positions were asserted by the Carriers regarding the same basic issues.

Therefore, we will sustain 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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.