

Award No. 13165
Docket No. TE-12164

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad that:

CASE NO. 1

1. Carrier violated the agreement between the parties when and because on the 4th day of July, 1959, it failed to permit O. B. Williams—the regular occupant of the first-shift Operator's position at Raleigh Yard, N. C. to perform work required on his position on that day.

2. Carrier shall be required to compensate O. B. Williams for 8 hours at the rate of time and one-half for Saturday, July 4, 1959.

CASE NO. 2

1. Carrier violated the agreement between the parties when and because on the 5th day of July, 1959, it failed to permit J. L. O'Neal—the regular occupant of the second-shift Operator's position at Raleigh Yard, N. C. to perform work required on his position on that day.

2. Carrier shall be required to compensate J. L. O'Neal for 8 hours at the rate of time and one-half for Sunday, July 5, 1959.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement was effective January 1, 1959 and by reference is included in this submission as though set out herein word for word.

The disputes submitted herein were handled on the property in the usual manner through the highest officer designated by the Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

no extra operator available he was used off of the assignment he had assumed and was, therefore, paid at the punitive rate for service on the two rest days of the assignment that he had assumed, retained and reverted back to, just as would have been the case of the regularly assigned employee.

In Example No. 3 the extra operator assumed the assignment of a swing position and again account there being no extra operator available, he was used off of such assignment on one of his rest days and as he had not been relieved from such assignment he continued to retain that assignment's work week and was, therefore, allowed the punitive rate for such service on the rest day of the assignment he assumed and retained.

In the instant case, having been relieved from the position of first-shift "RH" office, Raleigh, the extra operator had reverted to the extra board, relinquishing the work week of such assignment.

In passing, it is worth noting that in Examples Nos. 2 and 3 it is stated that Doe was used on another temporary vacancy account no extra board telegraphers available, clearly indicating that so long as Doe continued to hold such regular assignment he was not considered as an extra board telegrapher as his work week was governed by the assignment he held and not by seven consecutive days starting with Monday.

When the extra operator in the instant case was released from the position of first-shift Operator in "RH" office, Raleigh, he was in precisely the same position as a regularly assigned or extra man moving from one assignment to another or a regular man moving to or from the extra list—he relinquished the former work week and was prepared to either assume another assignment and its work week or to be used not more than 5 days in an extra or unassigned work week of seven consecutive days starting with Monday. If an extra employee can properly be allowed to move from assignment to assignment, relinquishing each former work week and assuming the new one on each successive assignment, and work an unlimited number of days in such manner, how can the irrational distinction be drawn that the same employee cannot move from the work week of a regular assignment to the extra or unassigned work week of "seven consecutive days starting with Monday"?

It is, therefore, the Carrier's position that the extra operator, as an unassigned employee, did not work more than 40 hours in his controlling work week of "seven (7) consecutive days starting with Monday" and he was, therefore, properly used on extra position of first trick, Raleigh Yard, on July 4, which is claimed by regularly assigned Operator O. B. Williams and also on extra position of second trick, Raleigh Yard, on July 5, which is claimed by regularly assigned Operator J. L. O'Neal.

The instant claims are without merit and should, therefore, be denied.

OPINION OF BOARD: The dispute is whether the claimants, regular employees, had a superior right to work on their rest days, Saturday, July 4, a holiday, and Sunday, July 5, 1959, to an extra employee who had worked 40 hours in the work week.

Normally, there would be little question who is entitled to the disputed work for the precedent is well established under the work on Unassigned Day Rule (Rule 12, Section 1 (n) in this Agreement) that the regular employee has priority where an extra employee already has worked 40 hours in

the work week. Awards 9393 and 12189. In this case, however, the carrier relies on a special addendum agreement, alleging that it constitutes an exception to the work on Unassigned Day Rule.

Carrier is putting up a smokescreen. The special addendum applies to Rule 12, Section 1 (h), a different rule than the one in the issue here. The special agreement in no way abridges the established priorities to work on unassigned days. The claim should, therefore, be sustained. Compensation in Case No. 1 should be at the time and one-half rate because it was a holiday. Compensation in Case No. 2 should be at the pro-rata rate. Award 13034.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

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

Claims sustained. Compensation in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1964.