

Award No. 15144
Docket No. TE-12889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. Carrier violated the provisions of the Telegraphers' Agreement when it failed to properly compensate C. P. Stout for services rendered on Monday, September 5, 1960.

2. Carrier shall now compensate Mr. Stout for ten (10) hours at time and one-half rate in addition to the amount already received.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended.

At the time cause for this claim arose, Mr. C. P. Stout, claimant, was regularly assigned as second trick telegrapher-leverman at Forrest, Illinois, with assigned hours of 3:00 P.M. to 11:00 P.M. He occupied a seven-day position with a work week of Tuesday through Saturday, with rest days of Sunday and Monday.

On Monday, September 5, 1960, a holiday and Mr. Stout's rest day, he was required to perform service at Saunemin, Illinois. He commenced work at 1:00 P.M. and completed service at 11:00 P.M. Mr. Stout was paid ten hours at time and one-half rate.

Carrier has not designated whether such payment was made in compliance with the Service on Rest Day Rule (Rule 7, Section 2(b)) or Work on Holiday Rule (Rule 7, Section 4). Claim has been made for payment under the provisions of both rules, less amount already paid.

The dispute here appealed has been handled on the property in the usual manner to the highest officer designated by Carrier to handle such disputes and failed of adjustment.

The claim was declined by the Chief Dispatcher on October 6, 1960.

In letter to the Superintendent dated October 25, 1960, the District Chairman of the Order of Railroad Telegraphers presented the following claim on behalf of Telegrapher Stout:

" * * * Mr. Stout is now entitled to be paid 10 hours for work performed on his rest day at time and one-half plus an additional 10 hours for work performed on a holiday at time and one-half. See Rule 7.

Mr. Stout received 10 hours' pay at time and one half and is now entitled to an additional 10 hours' pay at time and one-half."

The Superintendent in letter dated November 15, 1960, advised the District Chairman as follows:

"Neither Rule 7 nor any other rule in the telegraphers' agreement provides for double payment at time and one-half rate for time worked. Such is true regardless of the fact that such work is performed on a day which is both rest day and holiday and the claim presented in favor of Telegrapher Stout as set forth in your letter of October 25, 1960, is, therefore, declined."

A copy of the exchange in correspondence between the representatives of the parties in connection with the alleged dispute described in the Employees' ex parte Statement of Claim is attached hereto and made a part hereof, marked Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The question which is involved in this claim has been presented to the Board on several previous occasions.

The Organization contends that the following sustaining awards are controlling: 10541, 10679, 11454, 11899, 12453, 12471, 14138, 14889, 14528, 14977, 14978, 15000 and 15052.

The Carrier contends that we should follow Award 14240 and Award No. 23 of Special Board of Adjustment No. 564.

We are of the opinion that the principle of stare decisis compels us to follow the authority of the decided cases as cited by the Organization herein.

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 17th day of January 1967.