

Award No. 15441
Docket No. TE-14031

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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 in changing the assigned work week and rest days of Assistant Test Telegrapher F. L. Arnold, Illmo, Missouri, it suspended him from work on Monday, January 1, 1962, thus permitting him to work only four days in his work week which commenced on Thursday, December 28, 1961.

2. Because of this violation act, Carrier shall be required to compensate F. L. Arnold for January 1, 1962, which day's work and compensation therefor Carrier required him to lose as follows:

Eight (8) hours' pay at the pro rata rate for holiday pay;

Eight (8) hours' pay at the time and one-half rate of pay,
for work entitled to perform on a holiday.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1934, as supplemented and amended, is available to your Board, and by this reference is made a part hereof as though set forth herein word for word.

Immediately prior to January 1, 1962, there was at Illmo, Missouri, a position of Agent which was a five day position working Monday through Friday, with rest days of Saturday and Sunday. The position was hourly rated.

In addition to the position of Agent, other positions, also covered by the Agreement at Illmo, were three hourly rated Telegrapher positions which provided round-the-clock service seven days per week. F. L. Arnold, claimant in the instant dispute, was the regularly assigned Assistant Test Telegrapher with hours of assignment 7:55 A.M. to 3:55 P.M., Thursday through Monday, with rest days of Tuesday and Wednesday.

Claim was filed in favor of Assistant Test Telegrapher Arnold for eight hours at time and one-half rate on the basis that January 1, 1962 remained a work day and he was required to suspend work and for eight hours at pro rata rate same day as holiday allowance.

Claim was denied.

Exhibits 1 to 10 are attached hereto and made a part hereof. Also Carrier's submission in case covered by Docket TE-10693 is attached as Exhibit A. This exhibit on colored paper to readily distinguish it from other portions of submission in present case.

The applicable schedule agreement is that with The Order of Railroad Telegraphers effective December 1, 1934, as amended by Supplemental Agreement effective September 1, 1949, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is whether Carrier violated the Guarantee Rule by changing Claimant's rest days in such a manner as to cause him to lose a day's work on the fifth day in his work week. In Awards 10517, 10875, 11990, 11991, 11992, involving the same parties and issue we held it did. We so hold in the instant case.

In the Awards cited in the preceding paragraph we awarded the employee adversely affected be paid for the day lost. This case presents a novel issue in that the day lost was a holiday, and the Claim prays for eight hours' compensation at pro rata rate plus eight hours' holiday pay at time and one-half.

Carrier argues that it had the contractual right to change the rest days; the holiday was, therefore, Claimant's rest day and, therefore, under the Guarantee Rule Claimant is entitled only to 8 hours' pay at the pro rata rate.

It is not disputed that Carrier had the right to change the rest days. But in exercising the right, we have held, Carrier continues obligated to comply with the other provisions of its collective bargaining agreements. Award Nos. 7319, 5129.

Had Carrier not wrongfully deprived Claimant of his contractual right to work on the fifth day of his work week—a holiday—he would have been paid for the hours and at the rates as prayed for in paragraph 2 of the Claim. He is entitled to be made whole to the same extent. Award No. 13738.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15441,
DOCKET TE-14031 (Referee Dorsey)

Effective Monday, January 1, 1962, Carrier reclassified one position, abolished another, and made various necessary changes in rest day assignments. The rest days of Assistant Test Telegrapher (position to which Claimant was assigned) were changed so that Monday (which had theretofore been the fifth work day of the position's workweek) became the first rest day. The relief telegrapher was, therefore, required to work the position on that Monday and he received the holiday pay and other benefits which the agreement provides for the employee assigned to work the position on a holiday. Claimant, being effectively assigned to rest on Monday, performed no service; yet, he claims the right to be compensated the same as if he had still been assigned to work, and had worked. He contends that his "old work week" continued, not only for the purpose of applying the Weekly Guarantee Rule, but also for the purpose of giving him an agreement right to actually work the position.

The Award sustains Claimant's position and finds that he was "wrongfully deprived . . . of his contractual right to work on the fifth day of his work week — a holiday."

Under the clear provisions of the Change in Rest Day Rule and our prior Awards, the day involved in this claim was a properly designated rest day. No rule of the agreement guarantees Claimant a right to work on a properly designated rest day, and the Referee significantly does not attempt to identify any provision of the agreement that supports his conclusion to the contrary.

Prior Awards have held that in a case of this kind, Claimant's "old work week" continues for purposes of applying the Weekly Guarantee Rule to the week that he commenced before the effective date of the change in rest days; but the reasoning employed in those Awards repels the conclusion that this fictional continuation of the "old work week" carries with it a right to work on any newly designated rest day. The fundamental reason given to support those Awards is that the Change in Rest Day Rule should not be given the effect of impliedly cutting down or limiting the express provisions of existing rules guaranteeing employees eight hours' pay for five days in each work week. To say that Claimant not only had a right to eight hours'

pay on the fifth day of his "old work week", as provided for in the Guarantee Rule, but also had a right to work on the fifth day after it had been properly designated a rest day in accordance with the express provisions of the Change in Rest Day Rule, is simply to contradict the plain terms of the latter rule.

If there was ever any sensible reason for denying that the Change in Rest Day Rule impliedly modified the express terms of the existing Weekly Guarantee Rules, there is obviously much greater reason for denying that existing Weekly Guarantee Rules or any other provisions of the existing agreement impliedly modified the express terms of the subsequently adopted Change in Rest Day Rule.

As was fully explained to the Referee in the memorandum submitted by the Carrier Members, both the clear and express provisions of the rules and the ultimate reasoning in Awards cited by both parties support Carrier on the point that the most Claimant was entitled to was eight hours at the straight time rate. The punitive allowance provided for in this Award has no support in law or in reason.

We dissent.

G. L. Naylor
R. E. Black
T. F. Strunck
P. C. Carter
G. C. White