



Award No. 16541

Docket No. TE-15525

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Telegraphers' Agreement when on the 1st day of January 1964, it required Telegrapher J. C. Millikin to suspend work on 2:30 P. M. to 10:30 P. M. position in "MS" Office, San Antonio, Texas, in order to perform relief work on 6:30 A. M. to 2:30 P. M. position in "RG" Office, Laredo, Texas and refusing to compensate Mr. Millikin at the holiday rate of pay he would have earned on his regular position.

2. Carrier shall compensate Telegrapher J. C. Millikin an additional four (4) hours' pro rata pay at the prevailing rate of the position in "MS" Office, San Antonio, Texas. Mr. Millikin was compensated for only eight (8) hours' pro rata pay for being withheld from assigned position and eight (8) hours' pro rata pay for holiday; Mr. Millikin should have received eight (8) hours' pro rata pay plus eight (8) hours at time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. C. Millikin was regularly assigned to the assistant manager's position in MS Office, San Antonio, with assigned hours of 2:30 P. M. to 10:30 P. M. His position was assigned to work these hours on January 1, 1964 but the Carrier required him to protect the position of Telegrapher McLean at Laredo, Texas. Because of the Hours of Service Act, the Carrier could not permit Claimant Millikin to work January 1 as he would have had insufficient rest and therefore Claimant Millikin did not begin working the position at Laredo until 6:30 A. M. on January 2.

January 1 was a regular named holiday as shown under Rule 15, Section 2 of the Agreement. The Carrier paid Claimant Millikin eight hours pro rata for the holiday and eight hours pro rata account being held off his regular position on January 1.

referred to and quoted by the General Chairman is not applicable in this case because the claimant was not suspended from working during regular hours to absorb overtime. Furthermore, Rule 13 provides for the use of a regularly assigned employe for relief work. Even if there was a conflict between these two rules, which there is not, Rule 13, a special rule treating with a special situation must take precedence over Rule 5 (c) which is a rule of general application.

The General Chairman also states that the claimant is entitled to the pay of the position at San Antonio on January 1, 1964. We do not know of any rule support for such contention. Certainly there is no rule which provides for compensation at the punitive rate for work not required or performed. Your Board has refused to sustain claims at the punitive rate where no work was performed, even when the claimant was wrongfully deprived of such work. This principle is so well established as to render the citation of authority unnecessary.

OPINION OF BOARD: The Claimant herein held a regular assignment, which included work on the 2:30 P. M. to 10:30 P. M. shift at Carrier's "MS" office, San Antonio, Texas, on January 1, 1964. On January 1, 1964 Claimant was instructed to protect an assignment 6:30 A. M. to 2:30 P. M. in Carrier's relay office at Laredo, Texas, on January 2, which, because of the Hours of Service Law, prevented his working his regular assignment on Wednesday, January 1, 1964.

Claimant was allowed eight hours at straight time rate as holiday pay for January 1, 1964. He was also allowed an additional day at straight time rate which the Carrier in the handling on the property was on "account held off of his regular assignment." He was also allowed three hours and fifty minutes at the straight time rate as payment for travel time from San Antonio to Laredo. The claim for an additional four hours represents the difference between straight time and time and one-half rate, when held off his regular assignment by direction of the Carrier on the holiday.

In its submission to the Board the Carrier contends that Rule 13 of the Agreement did not require any payment for time lost, and that Claimant was overpaid eight hours. As such contention was not raised on the property, it will not be considered here.

There is no dispute that had Claimant not been diverted by the Carrier he would have worked on his regular assignment and been paid time and one-half on January 1, 1964. We agree with argument on behalf of the Claimant that he should not be placed in any worse position because of being diverted from his regular position. We also agree with the Petitioner that that portion of Rule 13 reading —

" * * * Employes used for relief will have no claim for guarantee of regular assignment in addition to compensation allowed on relief assignment."

is limited to providing compensation for the work performed by a diverted regular employe, and that it cannot properly be used to deprive Claimant of his earnings for January 1, 1964, when he was prevented from working on that day by the actions of the Carrier in diverting him from his regular assignment.

We will sustain the claim for an additional four hours at pro rata rate as claimed.

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 2nd day of August 1968.