

Award No. 16801
Docket No. TE-15289

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Detroit, Toledo and Ironton Railroad, that:

1. Carrier violated the terms of an Agreement between the parties hereto when it failed and refused to properly compensate R. E. Petticrew for work performed on Wednesday, December 25, 1963, Christmas, a holiday.

2. Carrier shall, because of the violation set forth in paragraph 1 hereof, compensate R. E. Petticrew eight (8) hours at the time and one-half rate for work performed on the holiday, in addition to the eight (8) hours at the time and one-half rate paid him for work performed on his rest day.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Detroit, Toledo and Ironton Railroad Company, hereinafter referred to as Carrier, and its employes in the Telegraphers' class, hereinafter referred to as Employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective May 1, 1946 (revised September 1, 1949) and as amended. Copies of said Agreement are available to your Board and are, by this reference, made a part hereof.

The relevant facts of this case are simple and undisputed. Claimant was, on the date involved in the claim, the regular occupant of the third shift operator-leverman's position at Short Cut Canal, Michigan. As such he had a work week of Thursday through Monday, rest days Tuesday and Wednesday. He had a Sunday assignment of the regular week day hours. Assigned hours 11:59 P. M.-7:59 A. M.

Carrier called claimant to perform service on his assignment on Wednesday, December 25, 1963, a rest day of his position, for which it compensated him under Service on Rest Day Rules. (Rule 27, Section I(m) A(1) namely a minimum of eight hours at the time and one-half rate). The Carrier, however, failed and refused to compensate claimant in accordance with the provisions of Rule 27, Section II-A(1), namely a day's pay (eight hours) at the time and one-half rate for work performed on the holiday (Christmas).

Claim was instituted pursuant to the provisions of Rule 27 for a day's pay for work performed on the holiday in addition to the day's pay paid claimant for service performed on his rest day, which the Carrier refuses to pay. Hence this appeal to your Honorable Board.

Attached hereto and made a part hereof as ORT Exhibits 1 through 8 are copies of all relevant correspondence exchanged between the parties during the handling of this dispute on the property. Carrier denied the claim.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in existence an Agreement governing rates of pay, hours of service and working conditions between Detroit, Toledo and Ironton Railroad Company and the employees designated therein represented by The Order of Railroad Telegraphers, effective May 1, 1946 (Revised September 1, 1949), copies of which are on file with your Board and are by reference made a part of this submission.

Claimant R. E. Petticrew was assigned to position of operator-leverman, Short Cut Tower, Michigan, hours 11:59 P. M. to 7:59 A. M., Thursday through Monday with rest days Tuesday and Wednesday. On Wednesday, December 25, 1963, one of his rest days, it was necessary to have claimant work his regular trick. He was paid 8 hours at the time and one-half rate for this service.

Rule 27, Section I — Rest Day, Paragraph (m), Section II reads in part as follows:

"Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

A. (1) Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work."

Rule 27, Section II — Holidays reads in part as follows:

"(a) Time worked on the following holidays: namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), within the hours of the regular weekday assignment shall be paid for on the following bases:

A. (1) Employees occupying positions requiring a Sunday assignment of the regular weekday hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required holiday service is on their regular positions or on other work."

OPINION OF BOARD: The Claimant, in this dispute, worked on his rest day which was also a holiday, Christmas Day. He was paid time and one-half for working on his rest day. The Claim is for additional pay at time and one-half for having worked on the holiday.

The issue involved in this dispute is the same as those involved in several awards of this Board. For the reasons stated in those awards, we find that the Agreement was violated. We will sustain the Claim.

See Awards Nos. 10541, 10679, 11454, 12453, 12471, 14171, 14138, 14489, 14528, 14977, 14978, 15000, 15052, 15450, 15398, 15440, 15764, 15875, 15892, 16101 and 16153.

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 22nd day of November, 1968.