



Award Number 17321

Docket Number TE-16820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Colorado and Southern Railway Company, that:

1. Carrier violated the Agreement between the parties when it failed to properly compensate J. Brewer, regularly assigned third trick telegrapher, Cheyenne, Wyoming, for service performed on December 25, 1965 and January 1, 1966.
2. Carrier shall compensate J. Brewer an additional eight (8) hours pay at the time and one-half rate for each date, December 25, 1965 and January 1, 1966.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1955, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At all times relevant, J. Brewer, hereinafter referred to as Claimant, was regularly assigned to the third shift telegrapher position at Cheyenne, Wyoming, with rest days of Friday and Saturday.

On Saturday, December 25, 1965 (Christmas Day) and Saturday, January 1, 1966 (New Year's Day), which were rest days of the Claimant, he was required to perform service on his regular assignment due to the absence of the regular relief employee. For such service, Claimant was compensated for eight (8) hours at time and one-half rate on each date.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 14.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: The claimant in this case was regularly assigned as Third Trick Telegrapher at Cheyenne, Wyoming, hours 12 midnight to 8:00 A.M., Sunday through Thursday, weekly rest days Friday and Saturday.

Because of an acute shortage of telegraphers, and in conformity with his request, the claimant was required to work on Saturday, December

25, 1965 (Christmas Day) and Saturday, January 1, 1966 (New Years Day), both of which were his weekly rest days. For performing 8 hours work on each of the two claim dates, the claimant was, in each instance, paid 8 hours pro rata for holiday pay and 8 hours at time and one-half for working on his rest day, or a total of 20 hours pay for 8 hours of work. (Carrier's Exhibit "A").

The Organization is claiming an additional 8 hours at the punitive rate, or the equivalent of 12 additional pro rata hours, on the premise that Rule 11 (Rest Days and Holiday Work) of the current agreement should now be interpreted to provide overtime on overtime pay when an employee is used on a rest day which also happens to be a holiday.

The Schedule of Rules Agreement effective October 1, 1948, and revised as of January 1, 1955, covering employees represented by the Transportation-Communication Employees' Union, is on file with the Third Division and by this reference is made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, a regularly assigned telegrapher, with assigned rest days of Friday and Saturday, was required to work on Saturday, December 25, 1965 (Christmas Day), and Saturday, January 1, 1966 (New Year's Day). Petitioner contends that Claimant is entitled to pay for eight hours at time and one-half rate for service performed on his rest days under the provisions of Section 1(1) of Rule 11—Service on Rest Days—and an additional eight hours at time and one-half rate for work performed on the holidays under the provisions of Section 2 of Rule 11—Holiday Work. Claimant was originally allowed eight hours at time and one-half rate for each of the days involved. On appeal to the highest officer of the Carrier designated to handle disputes, he was ultimately allowed eight additional hours at straight time rate in addition to eight hours at time and one-half rate for each day.

Beginning with Award 10541, dated April 25, 1962, which has been followed in many subsequent Awards, among the latest being Awards 16785, 16797, 16801, 16803, 16986 and 16987, the Board has sustained claims of employees for pay for eight hours at time and one-half rate for work on rest days and an additional eight hours at time and one-half for work on holidays under rules comparable to the rules involved herein. There is nothing in the record to cause us to reach a different result herein. However, as Claimant was allowed an additional eight hours at straight time rate, in addition to eight hours at time and one-half rate, upon appeal of the claim to the highest officer of the Carrier designated to handle disputes, the Claimant is entitled only to the difference between eight hours at straight time rate and eight hours at time and one-half rate, or an additional four hours at straight time rate for each of the dates involved.

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;

The 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.

A W A R D

Claim sustained to the extent of allowing Claimant an additional four hours at straight time rate for each date involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.