



Award Number 17545

Docket Number TE-16447

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. Carrier violated an agreement between the parties hereto when it failed to call R. S. Plum, occupant of rest day relief position Melstone, Montana to handle train order No. 157 and Clearance Form A on Monday, February 22, 1965, Washington's Birthday, a holiday.
2. Carrier shall, because of the violation set forth above, compensate R. S. Plum one "call" (three hours at the straight time rate).

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective September 1, 1949, as amended and supplemented, is available to your Board and is, by this reference, made a part hereof.

The question at issue here is the right of an employee to perform work arising on his position on holiday, as against performance of said work by a monthly rated agent who is on an all-service-rendered compensation basis.

The essential facts in this case are as follows: R. S. Plum, hereinafter referred to as Claimant, was instructed by C. E. Cornwall, Chief Dispatcher, by message dated February 8, 1965, as follows: (TCU Exhibit 1)

"... Our RSPlum will be as Melstone 1201Am Thursday Feb 18th and will stay on the relief position pending bulletin and until further notice Joint C-101"

In compliance with the above instructions Claimant assumed the relief operator's position at Melstone commencing 12:01 A.M., Thursday, February 18. As indicated by the bulletin attached as TCU Exhibit 2, the relief position works as follows:

one (1) clearance which was and is entirely proper in view of the fact that said work is assigned to him and regularly performed by him.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Copy of letter written to Mr. S. W. Amour,
Assistant to Vice President, to Mr. W. E.

Waters, General Chairman, under date of
May 19, 1965 Carrier's Exhibit "A"

Copy of letter written by Mr. Amour to Mr.
Waters under date of July 13, 1965 Carrier's Exhibit "B"

Copy of letter written by Mr. Amour to Mr.
Waters under date of January 24, 1966 Carrier's Exhibit "C"

Copy of letter written by Mr. Amour to Mr.
Waters under date of January 24, 1966 Carrier's Exhibit "D"

(Exhibits Not Reproduced)

OPINION OF BOARD: At the time of these events, Claimant held seniority in District 21. However, he had been "borrowed" to hold Relief Position in District 20 at Melstone, Montana. His assigned work week was Thursday through Monday, assigned rest days Tuesday and Wednesday. This schedule required him to perform rest day relief 12:00 Midnight to 8:00 A.M. on Thursday and Friday and 8:00 A.M. to 4:00 P.M. on Saturday. In addition, pursuant to Rule 11, Section 1 (e) he was assigned "fill-in" days on Sunday and Monday, 4:00 P.M. to 12:00 Midnight.

Monday, February 22, 1965 was a holiday (Washington's Birthday). Carrier blanked Claimant's position for that day, and paid him eight hours' holiday pay therefor at the straight time rate, pursuant to Agreement terms.

It is undisputed that on February 22, 1965, a train order and its accompanying clearance form were required at Melstone during the period between 7:15 P.M. and 7:50 P.M. and that this work was assigned to and performed by Agent O. L. Rittierodt. The latter worked regular assigned hours of 8:00 A.M. to 4:00 P.M., Sunday through Friday, assigned rest day Saturday. This position is a monthly rated position and the monthly rate covers all services rendered except on the one assigned rest day per week.

It is Employees' contention that Claimant would have performed this work—since it occurred during his assigned hours on Mondays—if he had not been released for the holiday, and that he should therefore have been called in for this work pursuant to Rule 11, Section 1 (m) and Interpretive Decision No. 2 of the 40-Hour Week Committee. Because he was not so called in, remedy of a three-hour call pay is sought for the Claimant.

Rule 11, Section 1 (m) states:

"Work on unassigned Days

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Rule 1, Decision No. 2 of the Forty-Hour Week Committee states in pertinent part:

"... where work is required by the carrier to be performed on a day which is not a part of any assignment, either an available extra or unassigned employee who would otherwise not have 40 hours of work that week or the regular employee may be used; unless such work is performed by an available extra or unassigned employee who would otherwise not have 40 hours of work that week, the regular employee shall be used. Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used. Rules in existing agreements shall be modified to conform with the intent above expressed. Wherever the words "the regular employee" are used in this paragraph, they shall mean the regular employee entitled to the work under the existing agreement."

Agent Rittierodt was not "an available extra or unassigned employee who [would] otherwise not have 40 hours of work that week". Conversely, in the absence of such an employee, the Claimant fulfilled the definition of the remaining category in Rule 11, Section 1 (m) and in Rule 1, Decision No. 2 of the Forty-Hour Committee. That is, he was the "regular employee". The work occurred during the span of his regularly assigned work day and work week. This was not true of Agent Rittierodt (regular hours 8:00 A.M. to 4:00 P.M.) or the other bargaining unit employee, Operator J. P. Smith (regular hours, 12:00 Midnight to 8:00 A.M.).

We do not regard Claimant's status as a "regular employee" ordinarily assigned to the day and the hours when the clearance arose, to have been nullified for this question by the fact that his home seniority was in another district or that he was during that period in the status of a Relief Position holder in this assignment. We have in the past held that the "regular employee" for purposes of Rule 11, Section 1 (m) is the incumbent of the position where and when the work in question is normally performed. Awards 6019, 12850, 13142, 13824, 14191, 15064, 16253.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

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