



Award Number 17546

Docket Number TE-16725

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

FORT WORTH AND DENVER RAILWAY COMPANY

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

1. (a) Carrier violated the Agreement when it improperly compensated Agent-Telegrapher C. W. Bond for work performed on September 13, 1965, at Sterley, Texas.

(b) Carrier shall compensate Claimant Bond in addition to compensation already allowed, one day's pay (\$22.50) at the straight time rate.
2. (a) Carrier violated the Agreement when it improperly compensated J. L. Dalton, Amarillo Texas, for work performed on December 22, 1965.

(b) Carrier shall compensate Claimant Dalton in addition to compensation already allowed, one day's pay (\$33.63) at the time and one-half rate.

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

CLAIM NO. 1

Mr. C. W. Bond, hereinafter referred to as claimant, was on claim date regularly assigned to the Agent-Telegrapher position at Sterley, Texas, with a work week of Monday through Friday, rest days Saturday and Sunday, with Saturday being worked on an accumulative basis as provided for in Rule 39 of the current Agreement.

At the end of his tour of duty Saturday, September 11, 1965, Claimant Bond had accumulated five rest days and was due to be relieved starting at 6:00 A.M., September 13, 1965. Account no extra men available for relief, claimant was instructed to work his accumulated rest days.

Monday, September 13, 1965, in addition to being an accumulated rest day, was claimant's birthday.

Claimant was allowed eight hours' pay at time and one-half rate for working on a rest day as provided by Rule 39 (n) paragraph (6) of the current Agreement. Claimant was also allowed eight hours' pay at time and one-half rate for working on his birthday. Claimant was not allowed eight hours' pay at the pro rata rate for his birthday.

CLAIM NO. 2

Mr. J. L. Dalton, hereinafter referred to as claimant, was on claim date regularly assigned to the third trick Telegrapher position, Amarillo, Texas, with a work week of Friday through Tuesday, rest days Wednesday and Thursday. Wednesday, December 22, 1965, in addition to being a rest day, was claimant's birthday.

Claimant was allowed eight hours' pay at straight time rate for his birthday and eight hours at the time and one-half rate for working on his rest day. Claimant was not allowed eight hours' pay at time and one-half rate for working on his birthday.

Claims were filed and handled in the usual manner up to and including the highest designated officer of the Carrier and have been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 26. The two claims were handled separately on the property, but have been combined in this submission due to the similarity of the claims.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: Claims Nos. 1 and 2 as quoted above were handled separately on the property as individual claims.

Claim No. 1 involving Agent-Telegrapher Bond: The claim date, September 13, 1965, was the claimant's accumulated rest day and also happened to be his birthday. The claimant worked eight hours on that date. He was allowed eight hours pay at time and one-half as a result of a timekeeping error, was also allowed an additional eight hours at time and one-half when actually this latter allowance should have been no more than the straight time rate.

The payment sought in this claim No. 1 is for one more day at straight time rate, in addition to that already received.

Claim No. 2 involving Telegrapher J. L. Dalton: The claim date, December 22, 1965, was the claimant's rest day which also happened to be his birthday. The claimant worked eight hours on that date. He was allowed eight hours at straight time for his birthday holiday and eight hours at time and one-half for working on his rest day.

The payment sought in this claim No. 2 is for one more day at time and one-half rate, in addition to that already received.

(Exhibits Not Reproduced)

OPINION OF BOARD: In Claim No. 1 the claim date, September 13, 1965, was the Claimant's accumulated rest day and also happened to be his birthday. The Claimant worked eight hours on that date. He was allowed

eight hours pay at time and one-half for working his rest day. He was also allowed an additional eight hours pay at the time and one-half rate, which appears to be the birthday pay provided by Article II, Section 6(a) of the National Agreement of November 20, 1964. Carrier later contended that this payment was made in error and should have been at pro rata as is actually provided in the cited rule.

The claim asks an additional day's pay at pro rata so as to make the total payment equal to one day at time and one-half for working a rest day, one day at time and one-half for working a holiday, and one day at pro rata for the birthday as provided by the November 20, 1964 Agreement.

In Claim No. 2 the Claimant was required to work on December 22, 1965, which was an assigned rest day and also his birthday. He was paid eight hours at pro rata for his birthday holiday and eight hours at the time and one-half rate for working. He asks an additional eight hours pay at the time and one-half rate.

The issues involved in these claims are the same as those involved in numerous awards of this Board, such as Awards 17050, 16857, 16855, 16845, 16643, 16291, 16153, 15892, 15875, 15764, 15440, and 15398 which sustained the claims. Accordingly the instant claims will be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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.