



Award Number 17790
Docket Number TE-17919

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad, that:

1. R. F. Hungerford, regularly assigned relief operator with relief days of Wednesday and Thursday, is entitled to be paid at the time and one-half rate for service performed on his assigned rest days as provided in the Agreement.
2. Carrier shall compensate R. F. Hungerford eight (8) hours at the time and one-half rate for service performed at S. S. 44, on Wednesday and Thursday, February 22 and 23, 1967.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949 as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented, progressed in accordance with the time limits provided by the Agreement, up to and including conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

This claim arose out of Claimant, a regularly assigned relief employee, having been diverted from his regular assignment, required to work on the rest days of his regular assignment and being denied the time and one-half rate for work performed on those days.

(b) ISSUES

Compensation due a regularly assigned employee for work performed on the rest days of his assignment when required by Carrier to work another assignment.

(f) AUTHORITIES RELIED ON

Awards of the Third Division, National Railroad Adjustment Board, Nos. 16290, 14599, 13006 and 12819.

CARRIER'S STATEMENT OF FACTS: The claimant in this dispute, Mr. R. F. Hungerford, owned regular assignment on Relief Position #11 with a work week of Friday through Tuesday, rest days Wednesday and Thursday.

On February 20, 1967, due to the fact that the regular incumbent had booked off sick and no qualified extra employe was available, the claimant was diverted under Article 29 of the schedule Agreement to the second trick assignment at Signal Station 44, South Norwalk, Connecticut on a further notice basis. This position carries work days of Wednesday through Sunday, Monday and Tuesday rest days. Mr. Hungerford worked this holddown at Signal Station 44 from Monday, February 20, 1967, until Sunday, February 26, 1967 inclusive. For service performed during this seven day period, he received forty hours pro rata pay and sixteen hours punitive pay for working the rest days of this holddown.

Signal Station 44 is located at the junction of the Carrier's Pittsfield Main Line and the four track main line running between New Haven, Connecticut and New York City. This station controls both freight and passenger traffic on these tracks and is open twenty-four hours a day, seven days a week.

Claim was instituted on behalf of Mr. Hungerford for eight hours' pay at the punitive rate for each day he was required to work on the rest days of his regular assignment, namely, February 22 and 23, 1967. Claim was progressed through the prescribed channels on the property up to and including the undersigned.

Attached in exhibit form is a copy of the pertinent correspondence as follows:

"A"—General Chairman's appeal

"B"—Carrier's decision

Claim was denied on the property on the basis that it is well established that when a regular employe is diverted to another assignment, under the provisions of Article 29, he takes the rest days of such assignment.

Copy of Agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this Submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant is a regularly assigned rest day relief employe assigned as follows:

Friday	7 A.M. to 3 P.M.	SS. 38
Saturday	7 A.M. to 3 P.M.	SS. 38
Sunday	3 P.M. to 11 P.M.	SS. 38
Monday	3 P.M. to 11 P.M.	SS. 44
Tuesday	3 P.M. to 11 P.M.	SS. 44
Wednesday	Rest day	
Thursday	Rest day	

On February 20, 1967, he was instructed to work the 3 P.M. to 11 P.M. shift at S.S. 44 until further notice because the regular incumbent was ill. He worked as instructed through Sunday, February 26, and was paid pro rata for each of these five days. He contends that he should have been paid the time and one-half rate for Wednesday and Thursday, February 22 and 23, the rest days of his own assignment, under Article 6A, II 1, of the Agreement.

Carrier contends that Claimant was diverted under the provisions of Article 29, taking the conditions of the position, including the rest days thereof, and that he received "rest day or punitive pay" for the rest days of his diversion assignment.

The record reflects inadequate briefing by both parties. However, it is perfectly clear that under the reasoning of either party Claimant would be entitled to time and one-half for two of the days he worked at S.S. 44 between February 20 and 28.

Our decision is that, without approving or disapproving the position of either party, Claimant is entitled to time and one-half payment for two days during the period February 20 and 28. If he has been so paid he is entitled to nothing more. Otherwise, he shall be so paid.

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 claim is disposed of in accordance with the Opinion.

A W A R D

Claim disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1970.