

Award Number 17829

Docket Number TE-18010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

**PARTIES TO DISPUTE:**

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
SOUTHERN PACIFIC COMPANY

TEXAS AND LOUISIANA LINES

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (T&L Lines), that:

1. Carrier violated the Agreement between the parties on October 4, 1967 by refusing to allow V. J. Daigle to work on a position he had been previously notified to protect on one of his assigned rest days.
2. Carrier shall compensate Mr. Daigle at the rate of time and one-half for October 4, 1967—total \$35.06.

**EMPLOYEES' STATEMENT OF FACTS:**

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated on various provisions of the collective bargaining Agreement, entered into by the parties effective December 1, 1946. The claim was submitted to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by Agreement rules and applicable provisions of law. It was discussed in conferences between representatives of the parties, the final conference having been held on April 25, 1968.

The controversy arose on October 4, 1967 when the Claimant, as instructed, reported for work. Upon arrival at his work location, however, he received instruction that he was not allowed to perform any work. In the meantime, unknown to the Claimant, his wife had received telephone notification that he was not to report for work on the claim date, one of his rest days. His time claim for eight hours' compensation was denied.

Employees contended in the handling on the property, and now contend before the Board, that certain provisions of the collective bargaining Agreement were violated. (These provisions are specifically set out in Section (d) hereof, Rules Relied On.) Carrier contended that (1) an extra telegrapher became available to work the position which the Claimant had been instructed to work, and (2) telephone notification to the Claimant's wife that he was not to work was sufficient basis for denial of the claim.

Daigle presented claim for eight (8) hours at time and one-half rate because he was not permitted to work on his rest day, October 4. The claim was declined. District Chairman, TCU, appealed November 3, 1967. Superintendent declined the appeal.

General Chairman appealed the claim December 27, 1967, to Carrier's Manager of Personnel who declined the claim on January 23, 1967. April 2 1968, claim was discussed in conference between these two but settlement was not reached.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant was regularly assigned as relief telegrapher-clerk-towerman, at West Tower, New Iberia, Louisiana. October 4, 1967, the claim date, was one of his rest days on that assignment.

At about 1:30 A.M., October 4, 1967, the Claimant was instructed by telephone at his home to protect the second shift position at West Tower on that day, beginning at 4:00 P.M. This was caused by the employee due to work the first shift at West Tower that day reporting that he would be unable to protect his assignment beginning at 8:00 A.M., and only one extra telegrapher being available at the time.

At about 7:15 A.M., October 4, a second extra telegrapher became available for duty, and he was assigned to the second shift at West Tower beginning at 4:00 P.M., the same shift that Claimant had previously been instructed to protect. At that time a further telephone call was made to Claimant's home to inform him that it would not be necessary for him to work on his rest day. Claimant was not at home, and the telegrapher placing the call was told by Claimant's wife that Claimant had gone fishing and that he was not expected to return home before he reported for work. Instructions were then issued that Claimant not be permitted to work the second shift on the date involved. He reported at the tower at 4:00 P.M., to find that the extra telegrapher was to fill the vacancy.

As the Claimant was not actually notified prior to reporting for work at 4:00 P.M. on October 4, 1967, that his services were not needed, the claim will be sustained (Award 13936). We do not agree that the telephone call to Claimant's wife, especially in view of her response, was notice to the Claimant not to report to work as previously instructed.

**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 24th day of April 1970.**