



Award Number 17842

Docket Number TE-17903

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**UNION PACIFIC RAILROAD COMPANY
(Northwestern District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation Communication Employees Union on the Union Pacific Railroad (South Central and Northwestern Districts), that:

1. Carrier violated the parties' Agreement because, on April 29, 1967, it suspended Telegrapher-Clerk M. J. Corak from work on his birthday (holiday) and required a Rule 2 non-telegrapher to copy train orders and clear trains at Nyssa, Oregon.
2. Carrier shall not be required to pay Mr. Corak eight (8) hours at time and one-half rate account this violation.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated on various provisions of the collective bargaining Agreement, effective October 1, 1959, as amended and supplemented, between the Transportation-Communication Employees Union and the Union Pacific Railroad Company (South Central and Northwestern District). The claim was handled on the property in the usual manner up to and including a conference with the highest officer designated by the Carrier to handle such claims, where it was discussed on November 25, 1967.

The dispute arose when the Carrier gave the Claimant the day off on his Birthday-Holiday, April 29, 1967 and compensated him for same, but required a Rule 2 Agent at the same location to copy and handle train orders and clearance cards during the assigned hours that Claimant was scheduled to work. The work of copying, handling and delivering train orders and clearance cards is normally, regularly and customarily performed by the Claimant.

It is the contention of the Employees that certain provisions of the collective bargaining Agreement were violated and that the named Claimant is entitled to the compensation requested. These provisions are set forth in Section (d)—Rules Relied On.

The Carrier conceded that the work of the absent Employee was performed in the manner asserted, but it contends that the Employees did not prove that the work in question was exclusively assigned to the Claimant and the claim is, therefore, without merit.

During the time when Mr. Corak was off duty on the birthday-holiday required by the Agreement, Mr. Armstrong did receive a train order, a photo copy of which is attached (marked Carrier's Exhibit A-1).

The union contends that Mr. Armstrong's copying a train order constituted a violation of the Agreement, that telegrapher-clerk Corak should have been called for this work, and on this basis claims 8 hours pay at the premium time and one-half rate.

Also in evidence as to the handling of the dispute by the parties is the following correspondence:

Carrier's Exhibit A-2—Letter of claim dated June 13, 1967, from Mr. H. L. Carraway, District Chairman of the Organization, addressed to Supervisor of Wage Schedules V. W. Hall.

Carrier's Exhibit B—Letter of reply dated August 8, 1967, from Supervisor of Wage Schedules V. W. Hall addressed to Mr. H. L. Carraway in which Mr. Hall initially explains the invalidity of the claim.

Carrier's Exhibit C—Letter dated August 19, 1967, from General Chairman A. S. Herrera to Assistant to Vice President N. B. Beckley simultaneously appealing the claim and advising Mr. Hall that his decision was not acceptable to the union.

Carrier's Exhibit D—Letter of reply dated September 26, 1967, from Mr. Beckley to Mr. Herrera, advising in detail why the claim, as presented, could not be allowed.

Carrier's Exhibit E—Letter of October 11, 1967, by Mr. Herrera to Mr. Beckley advising that the union will not accept the claim's declination and both serving notice of further appeal and asking for a conference.

Carrier's Exhibit F—Letter of December 14, 1967, in which Mr. Beckley confirms to Mr. Herrera the results of the November 25, 1967, conference. In that conference the prior denials were affirmed.

Carrier's Exhibit G—Letter of December 22, 1967, new General Chairman Carraway to Mr. Beckley advising of the union's intention to further appeal the claim.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Claimant was regularly assigned as first telegrapher-clerk at Nyssa, Oregon, on April 29, 1967, which was his birthday. He was given the birthday-holiday off, and allowed holiday pay.

The Petitioner contends that on Claimant's birthday holiday a Rule 2 Agent at the same location was required to copy and handle train orders and clearance cards, during Claimant's assigned hours, and that the work of copying, handling and delivering train orders and clearance cards is normally, regularly and customarily performed by Claimant.

In a long line of Awards this Board has held that work on a holiday comes under the "Work on Unassigned Days" rule (Rule 30(1) of the applicable Agreement) and Decision No. 2 of the Forty-Hour Week Committee, which reads in part:

"Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used."

There does not seem to be any dispute between the parties that the work of copying, handling and delivering train orders at Nyssa during Claimant's regular hours is normally, regularly and customarily handled by Claimant. There likewise seems to be no dispute that on Claimant's birthday-holiday such work was performed by the Rule 2 Agent who did not otherwise normally perform such work. In such circumstances we find the claim to be meritorious. See Awards 17088, 16811, 16666, 16252, 15950, 15911, 12957, among others.

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 April 1970.