



Award Number 17952

Docket Number TE-17999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
UNION PACIFIC RAILROAD COMPANY EASTERN DISTRICT**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation Communication Employees Union on the Union Pacific Railroad (Eastern Lines), that:

1. Carrier violated the TCU Agreement when on February 22, 1967 it failed and refused to fill the 7 A.M. to 3 P.M. Telegrapher-Clerk position and the 3 P.M. to 11 P.M. Telegrapher-Clerk position in "UD" telegraph office, Denver, Colorado and required or permitted an employe in a different class to perform work performed by the occupants of the unfilled position during the work week thereof.
2. The Carrier shall because of the violation set out above compensate Corum Coffey and D. C. Wales, the regularly assigned occupants of the two above named positions, each a day's pay (8 hours) at the time and one-half rate for holiday February 22, 1967 (Washington's Birthday) on which they were deprived of the right to perform work attached to their positions.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on various provisions of the collective bargaining agreement, effective November 1, 1962, as amended and supplemented, between the T C E U and the Union Pacific Railroad Company (Eastern District). The claims were handled on the property in the usual manner up to and including conferences with the highest officer designated by the Carrier to handle such claims, where they were discussed on August 4, 1967 and again on March 18, 1968.

This dispute arose when two regularly assigned employees in Carrier's General Telegraph Office at Denver, Colorado, were given the day off on Washington's Birthday, February 22, 1967, a Legal Holiday, and were compensated for same. However, during the shifts of the claimants, which ostensibly were blanked, another employee on duty in the office handled Train Orders and Clearance Cards and performed other duties of the absent employees.

It is the contention of the Employees that certain provisions of the collective bargaining agreement were violated and that the named claimants

The claim was discussed in conference on November 17, 1967 at which time Carrier's original declination was affirmed. Copy of Carrier's letter of November 20, 1967 confirming the conference is attached as Carrier's Exhibit F. The Organization again wrote the Carrier about this claim in their letter dated March 26, 1968, copy attached as Carrier's Exhibit G. A further conference was held on April 23, 1968 at which time Carrier reaffirmed its declination. Letter dated April 25, 1968, copy attached as Carrier's Exhibit H, confirmed the conference.

The rules of the Agreement relied on by the Organization in the handling of the claim on the property were:

Rule 29(1)

"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 employe who will otherwise not have forty hours of work that week; in all other cases by the regular employe."

Rule 30, Section 2-I-B-(2)

"When a position is regularly required on holidays to work more than three hours or two or more tours of duty, the assignment on holidays shall be deemed to be a full day assignment and entitle the employe to compensation at the rate of time and one-half with a minimum of eight hours."

(Exhibits Not Reproduced)

OPINION OF BOARD: At the time the claim herein arose Claimant Corum Coffey was regularly assigned telegrapher-clerk on the 3:00 P.M. to 11:00 P.M. shift in Carrier's "UD" General Telegraph Office, Denver, Colorado, with an assigned work week of Saturday through Wednesday, rest days Thursday and Friday. Claimant D. C. Wales was regularly assigned to Relief Position No. 2 in the same office, and on Wednesday, February 22, 1967, Wales was scheduled to work the first shift telegrapher position.

February 22, 1967, was a national holiday and Claimants were notified not to work on the holiday. Each was allowed eight hours' pay at pro rata rate for the holiday. The Petitioner contends that on the holiday work normally, customarily and regularly performed by Claimants, including the handling of train orders, clearing of trains, handling messages by Morse, sending and receiving messages on the printer, was performed by Chief Operator-Printer Mechanician on the first and second shifts and that such work, especially the handling of train orders and clearance cards, is not performed by the Chief Operator-Mechanicians on other days of their assignment.

In a long line of Awards this Board has held that work on a holiday comes under the "Work on Unassigned Days" rule (Rule 29(1)) 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 seems to be no dispute that on the holiday involved the Chief Operator-Mechanicians did perform the work of handling train orders and clearance cards on the first and second shifts. There likewise seems to be no dispute that such work is not performed on first and second shifts by Chief Operator-Mechanicians on other days of their assignment. In such

circumstances we find the claim to be meritorious. See Awards 17842, 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 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 28th day of May 1970.