

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM:

CLAIM NO. 1

1. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Telegrapher J. M. Wagner for Thursday, November 28, 1968, a legal holiday, as provided for in the Agreement.

2. Carrier shall now compensate Telegrapher J. M. Wagner a day's pay at the pro rata rate of his regular position for Thursday, November 28, 1968.

CLAIM NO. 2

1. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Telegrapher F. R. Morgan for Thursday, November 28, 1968, a legal holiday, as provided for in the Agreement.

2. Carrier shall now compensate Telegrapher F. R. Morgan a day's pay at the pro rata rate of his telegrapher position for Thursday, November 28, 1968.

CLAIM NO. 3

1. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Telegrapher G. L. Rees for Wednesday, January 1, 1969, a legal holiday, as provided for in the Agreement.

2. Carrier shall now compensate Telegrapher G. L. Rees a day's pay at the pro rata rate of his regular telegrapher position for Wednesday, January 1, 1969.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on provisions of the collective bargaining Agreement, effective June 1, 1946, as amended and supplemented, between the parties.

Dear Sir:

Reference is made to your letter February 20, 1969, File R-1593, in regard to:

'STATEMENT OF CLAIM:

1. Carrier violated the Telegraphers' Agreement when it failed and refused to compensate Telegrapher G. L. Rees for Wednesday, January 1, 1969, a legal holiday, as provided for in the Agreement.
2. Carrier shall now compensate Telegrapher G. L. Rees a day's pay at the pro rata rate of his regular telegrapher position for Wednesday, January 1, 1969.'

Mr. Rees was not suspended from his position as telegrapher. Rule 16 (D-1) of your Agreement makes reference to employees **promoted** to the train dispatchers' extra list, which is exactly the situation in which Mr. Rees was placed on December 30, 1968.

Claimant was not covered by the provisions of Article III of the Agreement of June 24, 1968, since he was working under the ATDA on December 30 and 31, 1968, and could not, at the same time, demand rights under the TCU Agreement.

Your attention is directed to Second Division Award No. 5627.

Your position, allegations and claim are denied.

Yours truly,

/s/ J. W. Lovett
J. W. Lovett,
Director of Personnel"

OPINION OF BOARD: Claimants in this case are regularly assigned telegraphers who also hold seniority as train dispatchers and on occasion perform extra work in the latter capacity. The question at issue concerns applicability of the holiday pay provisions of Article III, Agreement of June 24, 1968, where such holidays occur at a period of time when regular assigned telegraphers are performing service as train dispatchers.

In Claim No. 1, regular telegrapher J. M. Wagner, whose rest days are Wednesday and Thursday, worked his regular assignment on the days preceding and following his rest days. On Thursday, November 28, 1968, the Thanksgiving holiday, he worked as a train dispatcher. He claimed eight hours' holiday pay under the agreement provisions referred to above, which claim was denied by the Carrier.

In Claim No. 2, regular telegrapher F. R. Morgan had rest days of Thursday and Friday. On Wednesday preceding the Thanksgiving holiday of November 28, 1968, he did not work, but deadheaded to Denver for which he was compensated under terms of the dispatchers' agreement. He worked as a dispatcher on the holiday, Thursday. Then, on Saturday, the first work

day following his rest days, he worked his regular assignment. He claimed eight hours holiday pay under the agreement provisions referred to above, which claim was denied by the Carrier.

In Claim No. 3, the holiday involved was New Year's Day, January 1, 1969. Claimant G. L. Rees is a regular telegrapher with Tuesday and Wednesday as rest days. On Monday, December 30, 1968, the day preceding his rest days, he worked as dispatcher. He did not work on the holiday, but worked his regular assignment on Thursday, January 2, 1969, the first work day following his rest days. He claimed eight hours holiday pay under the agreement provisions referred to above, which claim was denied by the Carrier.

The provisions referred to require a day's pay of eight pro rata hours to regular assigned hourly rated telegraphers for the designated holidays, when they meet the qualifications specifically set out in Section 3, which, so far as is applicable here, reads as follows:

"A regularly assigned employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid him by the carrier is credited to the work days immediately preceding and following such holiday. . . .

* * * * *

Compensation paid under sick leave rules or practices will not be considered as compensation for purposes of this rule."

The effect of the Carrier's contentions in support of its denial of the claims, very briefly summarized, is that the compensation required to qualify an employe for holiday pay must arise from a provision of the agreement covering such employe, and that since such was not the case here the claimants did not qualify for the holiday pay.

Essentially the same contentions and resulting issue have been before this Board and others on a number of occasions. In Awards 11317 and 16457 telegraphers who also worked as extra dispatchers were involved, just as is the case here. See, also, Awards 11551, 11977, 14501 of this Division, Award 37 of Special Board of Adjustment No. 122, and Award 82 of Special Board of Adjustment No. 192.

The effect of these decisions is that the rule makes no qualification with respect to the source of the compensation paid by the Carrier and credited to the employes' regular work days immediately preceding and following the holiday. And since only one exception—that with respect to sick leave payments—is expressed, no other or further exceptions may be implied. Such decisions cannot be characterized as palpably erroneous; therefore, they provide valid precedent.

It follows that since in the present case compensation, other than sick leave pay, paid by the Carrier to each of the claimants was credited to the work days of their regular assignments immediately preceding and following the holidays, the claims must 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 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.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.