

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19449
Docket Number TE-19493

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Formerly Transportation-Communication Division, BRAC

PARTIES TO DISPUTE:

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(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Missouri-Kansas-Texas Railroad Company, T-C 5821, that:

Carrier violated the provisions of the Telegraphers' Agreement when on April 22 and 23, 1970, it caused, allowed and permitted Wire Chief-Telegrapher J. D. Cline, Denison, Texas to suspend work during regular working hours of his assignment and to absorb overtime and improperly compensating him for such services rendered on the claim dates and Carrier shall now allow claimant Cline the existing shortage of three hours' pay at time and one-half rate for each claim date for such violations.

OPINION OF BOARD: The Claimant, J. D. Cline, contends that Carrier did not properly pay him for work performed on April 22 and 23, 1970. He claims entitlement to an award for the difference between the wages he received for such work and the wages deriving from eight (8) hours at the time and one-half rate of the Manager-Wire Chief position which Carrier required him to work off his regular assignment (6 a.m. to 2 p.m. on April 22 and 23, 1970), and eight hours at the pro rata rate of his Wire Chief Telegraphers position for work performed on his regular assignment (4:30 p.m. to 9:30 p.m. on April 22 and 23, 1970).

FACTS OF RECORD

The pertinent rules of the Telegraphers' Agreement are as follows:

"RULE 9 HOURS OF SERVICE

(e) Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

"(o) Regular assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on rest days and holidays. This paragraph shall not apply in case of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

"(p) Employees will not be required to suspend work during regular working hours or to absorb overtime."

"Rule 5 (c) of the Telegraphers' Agreement, reads as follows:

'(c) When employees, covered by these rules, are temporarily transferred to a position paying a lower rate than their regular assignment, they will be paid at their regular wages. When transferred temporarily to a position paying a higher rate they will be paid at rate applying to such position.'"

"Rule 5 (d) of the Telegraphers' Agreement reads as follows:

'(d) When taken from their regular positions to work extra, they will be allowed actual expenses not exceeding three dollars fifty cents (\$3.50) per day in addition to their regular rate of pay.'"

Claimant holds a regular Wire Chief position in the Denison "WD" Relay Office, Denison, Texas, with hours from 4:30 p.m. to 12:30 a.m., Monday through Friday, rest days of Saturday and Sunday.

On Wednesday, April 22, 1970, according to the Carrier's submission, the Claimant "was instructed, by phone and confirmed in writing, as follows:

"Due to an emergency on Mrs. C. P. Spears' Manager-Wire Chief's Position No. 3916, Denison Relay, Position No. 3918, Second Trick Wire Chief-Telegrapher assignment, is being blanked on this date for the duration of this emergency and you are being used as an extra employee on Mrs. Spears' position during the time this emergency exists."

On June 22 and 23, 1970 the Claimant worked the Manager-Wire Chief's position, which was vacant due to the sickness of the incumbent of the position, during the hours 6:00 a.m. to 2:00 p.m. In addition, on each of these days, Claimant worked from 4:30 to 9:30 p.m. in the Denison Relay office.

Claimant's time reports of April 22 and 23, 1970 reflect the following: "Claim 8 hours time and one-half 6 am to 2 pm per Rule 9E. Claim 8 hours straight time 430 pm to 930 pm per Rule 90 and 9P. The foregoing was disallowed by Carrier and, instead, for each of the two days involved, Claimant was compensated eight hours at Manager-Wire Chief's position straight time rate from 6 am to 2 pm and five hours at the overtime rate of such position from 430 pm to 930 pm.

In handling on the property the Organization asserted in a May 8, 1970 letter that Claimant "was verbally instructed to protect five hours of his own assignment, i.e. 430 pm until 930 pm, while such 'emergency' existed." and that his regular assignment was not blanked for the two claim dates in question; hence, his use for only five hours was a violation of Rule 9 (o) and (p). In response the Carrier asserted that (1) there was no violation because claimant "was temporarily transferred to the Manager-Wire Chief's position under Rule 5, (2) the second trick Wire-Chief-Telegrapher's position was blanked, and (3) since the second trick position was blanked and the claimant "was not connected with that position in any manner", the claimant "could not suspend work during the regular work hours" so as to violate Rule 9(p).

The record is unclear on the reason why claimant's second trick work was limited to five (5) hours. Though Carrier at one point referred to the Hours of Service law in this connection, the parties apparently agreed on the property that such law is not an element of the case.

RULINGS ON PETITIONER'S CONTENTIONS

The crux of Petitioner's case is that claimant's second trick assignment was not in fact blanked, from which it necessarily follows that Carrier's method of compensation violated Rule 9(e), (o), and (p). Carrier, on the other hand, asserts that its action was in compliance with Rule 5(c) and (d) and that it did not violate any rule of the Agreement.

We find that a preponderance of evidence of record shows that claimant's regular second trick assignment was not blanked and that Carrier therefore violated the Rules as contended by Petitioner.

From the beginning of this case claimant has relied on his assertion that he was verbally instructed to work five (5) hours on his second trick assignment after working the 6 am to 2 pm position. The evidence, and logical inferences therefrom, supports claimant's position. The Carrier's own evidence shows that a verbal communication by phone did occur. The Carrier did not, however, enter a direct denial of the nature of the verbal instructions as asserted by claimant; instead the Carrier simply argued that the job had been blanked and that ended the matter.

Additional proof of the claim arises from the fact that claimant was not on duty for two and one-half (2½) hours between the first and second trick work on each of the two days in question. The logical inference here is that claimant would have worked from 6 am to 7 pm, without off-duty interruption, if he had in fact been performing only the duties of the Manager-Wire Chief position. The work was scheduled differently, however, with the same amount of Manager-Wire Chief overtime being required on each day of the second trick work. The forcible inference from these considerations is that Claimant's second trick work was on the work of his regular assignment.

We also note that Carrier placed undue emphasis on Rule 5(c) and (d) in contending that such rule gave "Carrier the explicit right to take an employee from his regular assignment to work extra, as was done with Mr. Cline". Petitioner nowhere argued that Carrier did not have such right. Petitioner's position was premised on the proposition that Carrier's exercise of Rule 5 rights may, in certain circumstances, invoke other Rules of the Agreement. That premise is sound and it came into play in this case. While Rule 5 prescribes certain rights and obligations of Carrier respecting temporary transfers of employees, the rule does not in any way relieve Carrier of its obligations under other rules which may be invoked by the facts of a particular case.

On the record as a whole, therefore, we find that claimant's regular second trick assignment was not blanked and that he worked such assignment for five (5) hours on each of the two days in question. We find further that Carrier's limiting claimant to five (5) hours on each such day, without proper cause, violated Rule 9(p) of the Agreement. Having so found, it follows that Carrier also violated Rule 9 (e) and (o). Therefore, this claim will be sustained for the difference between the wages Claimant received for April 22 and 23, 1970, and the wages deriving from eight (8) hours at the time and one-half rate of the Manager-Wire Chief position, plus eight (8) hours at the pro rata rate of the Wire Chief-Telegrapher position for April 22 and 23, 1970.

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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.