

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19618
Docket Number TE-19435

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: (
(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 5814, that:

Claim in favor of telegrapher G. L. Walter, regularly assigned to the Muskogee-Tulsa-McAlester relief assignment, for the difference between time and one-half rate, as claimed, and pro-rata rate, as allowed for eight hours' service, as rendered on February 26 (Thursday), February 27 (Friday), March 2nd (Monday), and March 3rd, 1970 (Tuesday).

OPINION OF BOARD: This claim arose account claimant, a regularly assigned relief telegrapher, being required to work at the pro rata rate for eleven consecutive days without observing a rest day. Claimant contends that four of these days were rest days for which he should have been paid time and one-half.

FACTS

Claimant was the regularly assigned telegrapher on the Muskogee-Tulsa-McAlester relief assignment. He was directed by Carrier to work off his position as regularly assigned relief telegrapher to protect a vacation vacancy at North Tower, Muskogee, Oklahoma. He worked four days of the work week of his regular assignment before he moved to the North Tower vacancy. (February 21-24, 1970). He worked the North Tower vacancy for seven successive days. (February 25-March 3, 1970) Claimant's position as regularly assigned relief telegrapher protected the North Tower rest days, which, in this instance, fell on March 2 and 3, 1970.

The Rules to be considered are Rules 9(b) and 26 (m) of Agreement between the parties effective September 1, 1949. Also to be considered is a Letter of Understanding entered into by the parties under date of September 15, 1953. The Rules, in pertinent part, and the Letter of Understanding read as follows:

"RULE 9 (b)

(b) Except as otherwise provided, time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate. This section does not apply to positions prefixed by asterick (*). This section does not apply

"when these positions are reclassified to agent telegraphers.

Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Rule 26.

Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Rule 26."

"RULE 26 - The Forty Hour Week

(m) - Service on Rest Days -

1. This paragraph (m) is for the sole purpose of determining the compensation for employees who are required to work on their assigned rest days. It is not to be used to create, enlarge or take away any rights or obligations which the carrier or the employees may have by virtue of other rules in this agreement, including those adopted or revised to conform to the March 19, 1949 Agreement. Among others, it is to have no bearing on rules in effect on and after September 1, 1949, relating to the right of the employees, if any, or on the obligation of the carrier, if any, to have positions filled on any day of the week."

* * *

"V. Service rendered by an employee on his assigned rest day or days filling an assignment which is required to be worked or paid eight hours on such day will be paid for at the over-time rate with a minimum of eight hours."

Letter of Understanding dated September 15, 1953:

"Dallas - September 15, 1953

SUBJECT: 40-Hour Week - Telegraphers' .
Agreement

"Hereafter, when a regularly assigned employee covered by the Telegraphers' Agreement, under Company orders, works the five or six regularly assigned work days of his assigned work week, and is then used on regularly assigned rest day of his assigned work week in extra service, the employee so used should be paid at time and one-half rate for work actually performed.

If thereafter continued in extra service, the said employee will take the work days and rest days of the position on which used in extra service.

When returned to his regular assignment, said employee will resume the assigned work days and rest days of his regular assignment.

Where the regularly assigned employee exercises his seniority to perform temporary extra work, he will take work days and rest days of assignment in extra service when he assumes the duties of the position in extra service."

CONTENTIONS OF PARTIES

Petitioner contends Carrier violated Rules 9(b) and 26(m) and that Carrier must pay time and one-half for claimant's work on the rest days of his regular position, February 26 and 27, 1970, and for his work on the rest days of the North Tower position, March 2 and 3, 1970. Because claimant was moved to North Tower at the direction of Carrier, it is contended the situation is not within the Rule 9(b) exception which permits pro rata pay for work in excess of forty hours or five days in a work week where such work is performed "by an employee due to moving from one assignment to another or to or from an extra or furloughed list."

It is Carrier's position that the Rule 9 (b) exception applies where an employee is permitted and/or required to move from one assignment to another and that, in any event, the September 15, 1953 Letter of Understanding supports Carrier's action.

RESOLUTION

In order to resolve these contentions we shall first examine the Understanding dated September 15, 1953, because, where applicable, such a special agreement takes precedence over general provisions of the Agreement.

The Understanding relates to a regularly assigned employee who is used in extra service and then returned to his own assignment; it prescribes a formula to determine when such an employee shall be paid time and one-half for work on the assigned rest day of his assigned work week and when he shall be paid time and one-half for work on the rest days of the position to which diverted. Apparently the parties intended the Understanding to govern the instant situation and we shall give it that effect.

Paragraph 1 of the Understanding provides that time and one-half will be paid for work on a rest day "when a regularly assigned employee... under Company orders, works the five or six regularly assigned work days of his assigned work week, and is then used on regularly assigned rest day of his assigned work week, in extra service..." Claimant worked only four "regularly assigned work days of his assigned work week" before working at North Tower in extra service. And since four days are not "five or six" days as clearly specified in the Understanding, it necessarily follows that the Understanding precludes claimant from receiving time and one-half pay for working his own rest days of February 26 and 27, 1970.

Paragraphs 2 and 3 of the Understanding preclude the claim for March 2 and 3, 1970. These paragraphs provide:

"If thereafter continued in extra service, the said employee will take the work days and rest days of the position on which used in extra service.

When returned to his regular assignment, said employee will resume the assigned work days and rest days of his regular assignment."

Claimant worked in extra service at North Tower from February 25 through March 1, 1970. On March 2, 1970, he returned to his regular assignment as relief telegrapher which protected the rest days at North Tower. When he worked at North Tower on March 2 and 3, 1970, he had resumed "the assigned work days...of his regular assignment", as provided in paragraph 3 above; thus his March 2 and 3 work at North Tower was performed on assigned work days of his regular assignment. Stated differently, he did not continue in extra

service at North Tower on and after March 2, so as to have the North Tower rest days accrue to him under paragraph 2 above by reason of his having worked the previous five assigned work days of the North Tower position.

For the above stated reasons we shall deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.