

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20761
Docket Number CL-20523

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7424) that:

1. Carrier violated the Telegraphers' Agreement (TCU), in particular Rules 2 (f-1), 2 (f-2) and 21, when it arbitrarily, without agreement, reduced the rate of pay of the Rest Day Relief position on Sundays at Bismarck, Missouri, beginning Sunday, August 1, 1971; (Carrier's File 380-2945).

2. Carrier shall now be required to compensate the incumbent of the Rest Day Relief position for the difference in rate of pay between that of Star Agent - Telegrapher and Telegrapher-Clerk, beginning Sunday, August 1, 1971 and continuing each subsequent Sunday thereafter, until violation is corrected and the Rest Day Relief position is properly compensated in accordance with the Agreement.

OPINION OF BOARD: This claim concerns the proper rate to be paid the occupant of the Rest Day Relief position at Bismarck, Missouri. Petitioner claims that the rate for the Sunday assignment of the Rest Day Relief position should be that of Star Agent-Telegrapher, rather than the trick rate of pay now being allowed.

Prior to June 28, 1960, the station force at Bismarck consisted of a Star Agent, with no regularly-assigned hours, which was worked six days per week with Sunday rest days. No relief was provided the Star Agent on Sundays. There were three continuous-service trick Telegrapher assignments at Bismarck. The first trick had assigned hours of 7:00 AM to 3:00 PM, with rest days of Tuesday and Wednesday which were filled by a relief position headquartered at Bismarck. The second trick had assigned hours of 3:00 PM to 11:00 PM, with assigned rest days of Wednesday and Thursday. The Wednesday rest day was filled by a traveling relief assignment; the Thursday rest day was filled by the relief assignment headquartered at Bismarck. The third trick Telegrapher had assigned hours 11:00 PM to 7:00 AM, with rest days of Friday and Saturday. His relief also was worked by the Bismarck relief position. Effective July 28, 1960, the first trick Telegrapher's assignment was abolished, and the Star Agent was assigned to work 7:00 AM to 3:00 PM. One less regular position in the Bismarck force resulted in changing the relief assignment headquartered at Bismarck to work as follows:

Sunday	7:00 AM-3:00 PM	Star Agent-Telegrapher - pro-rated monthly rate
Monday and Tuesday	3:00 PM-11:00 PM	Second Trick Telegrapher - hourly rate
Wednesday and Thursday	11:00 PM-7:00 AM	Third Trick Telegrapher - hourly rate

This arrangement continued for over eleven years. Then, effective August 18, 1971, the Sunday work for the relief position was classified as that of Telegrapher-Clerk at the rate of pay of \$4.0983 per hour, a rate less than that previously allowed, e.g., the Star Agent-Telegrapher rate.

Several contentions are advanced by the Carrier for paying the disputed rate on Sundays. Mainly, though, Carrier argues that the job worked on Sundays is not the same as the Star Agent-Telegrapher during the remainder of the week. Community businesses are closed, and the station force is not on duty; thus, contends Carrier, the Star Agent is not really relieved on Sundays, and the relief position merely picks up a "tag end" day on Sundays.

The Organization argues that the 40-Hour Week Agreement does not permit a relief employe to be paid less than the rate of the job which he is relieving, and while it is recognized that the relief position is not performing each and every function of the Star Agent-Telegrapher on Sundays, the occupant nonetheless is performing sufficient of his duties to qualify him for the higher rate.

Many awards have been cited to us in support of both contentions. In our awards 12635 (Seff), 12080 (Kane) and 11981 (Rinehart), we held that it is not necessary for an employe to take over and perform all of the duties and responsibilities of a higher-rated position to be entitled to be paid at the higher rate. In our Award 5722 (Guthrie), we held that a regular relief position must be paid the rate of pay applicable to the position on which relief service was performed.

Award 13090 (Ables) involved a case quite similar to the one at hand. In sustaining Claim 1 of that decision, we stated:

"On balance, we agree with the employes' position for the reasons given. Someone was relieved on Sunday and we believe it was the agent since the agent was on rest days, Saturday and Sunday, and the relief man who relieved him on Saturday (and for which he was paid at the Agent's rate) was the same man who performed essentially the same duties on Sunday, during the same hours, as he performed them on Saturday."

We followed Award 13090 in Award 13325 (Dorsey). In our Award 18782 (Devine), we stated:

"It is well settled by prior awards of this Board that under rules such as Rule 26, Section 1(e), heretofore quoted, regular relief employees are entitled to the same rate as that applicable to the position on which the relief service is performed."

It appears well settled that it is improper to pay a relief employee less than the rate of the position relieved, ~~even though~~ that relief employee may not be required to perform all of the duties of the position relieved.

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:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.