

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22312  
Docket Number CL-22283

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
(  
(The Denver and Rio Grande Western  
( Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8482) that:

1. The Carrier has violated, and continues to violate, the provisions of Supplement "D", Memorandum of Agreement and Understanding between the Denver and Rio Grande Western Railroad Company and Employes represented by the Order of Railroad Telegraphers, when J. R. Chavies, Manager in the "DC" Office at Denver, Colorado, was required, beginning with Saturday, February 14, 1976, to be on duty for an average of more than four (4) hours on the sixth day of his work week.

2. The Carrier shall now be required to compensate J. R. Chavies for four (4) hours at overtime rate for each of the following days (Saturdays) and four (4) hours at overtime rate for holidays falling within the period of violation, and said claim to continue until the violation ceases.

February 14, 1976	March 6, 1976	April 3, 1976
February 16, 1976	March 12, 1976	April 10, 1976
February 21, 1976	March 20, 1976	April 17, 1976
February 28, 1976	March 27, 1976	April 24, 1976
May 1, 1976	June 5, 1976	July 3, 1976
May 8, 1976	June 12, 1976	July 5, 1976 (Holiday)
May 15, 1976	June 19, 1976	July 10, 1976
May 22, 1976	June 26, 1976	July 17, 1976
May 29, 1976		July 24, 1976

OPINION OF BOARD: The Claimant in this case, Mr. J. R. Chavies, is Manager of the Carrier's "DC" Office in Denver, Colorado. Said position has been designated and rated as a 6-day position with the understanding that the job is governed by Supplement "D" to the Agreement between the parties. Said language is as follows:

"(a) There is in effect a monthly rate of pay for the position of 'Manager' in the Relay Department in the 'DC' office at Denver, Colorado. This monthly rate comprehends all service rendered by the incumbent of the position during a work week of six days. When the position is worked on the seventh day in the week additional compensation is allowed for such seventh day.

"(b) Service performed by the incumbent of this position is governed by that portion of Rule 6, Section 3 (b) of the current general agreement which reads as follows:

'Such employes may be used on the sixth day of the work week to the extent needed without additional compensation.'

"This Memorandum of Agreement and Understanding is made for the purpose of establishing a mutually acceptable basis for the application of the immediately above quoted portion of the rule referred to.

"IT IS AGREED AND UNDERSTOOD:

"(1) The words 'to the extent needed' as applied to service performed by the Manager on the sixth day of his work week is construed to mean that as a rule the incumbent of this position will not be required to be on duty at the office on Saturdays (the 6th day) for an average of more than four hours. It is understood that if a situation involving duties and responsibilities of the position of Manager should develop which cannot be adequately handled by other telegraphers then on duty in the office, the incumbent of the position will remain on duty to the extent needed. Under such circumstances, if he has departed from the office, other telegraphers may call him on the telephone and secure advice or information from him and if necessary, he will return to the office.

"(2) It is further agreed and understood that if other telegraphers in the office should perform some of the incidental duties of the position of Manager on Saturdays after the regular incumbent of the position has departed from the office, as per (1) above, no claims will be entertained on that account."

Claimant asserted that prior to the first of the dates set forth in the Statement of Claim, the Carrier employed telegraphers in the "DC" Office on Saturdays, with the understanding such employees might perform some of the incidental duties of the Manager position after the incumbent of said position had departed from the office, but that no claims would be asserted as a result of such work being performed. It was stated that effective on the date of the instant claim the Carrier dispensed with the services of employees other than the Manager on Saturdays, which resulted in Mr. Chavies being required to work a full 8 hours on each of the stated dates.

By contrast, the Carrier took the position that Mr. Chavies was the only telegrapher on duty between the hours of 8:00 a.m. and 4:00 p.m. after February 9, 1976, so that the "other telegraphers then on duty in the office" situation stated in Supplement "D" could not possibly be applicable. The Carrier asserted, moreover, that the Manager position clearly contemplates 48 hours of work per week, because wage increases for said position have consistently been granted on the basis set forth in Rule 6, Section 3, which specifically sets forth a work week of said duration. In addition, Rule 7 of the contract provides for overtime pay for hours worked in excess of 8 hours per day, and there is no Rule in the agreement which requires the Carrier to pay overtime for any part of a regular 8-hour assignment.

Supplement "D" allows employees in the position of the Claimant to be assigned on a 6-day basis without additional compensation. The provision, however, states that such employees will be used on the sixth day only "to the extent needed." Note (1) to the provision defines "to the extent needed" as limited to mean "that as a rule the incumbent of this position will not be required to be on duty at the office on Saturdays....for an average of more than four hours." The language goes on to provide that "if a situation involving duties and responsibilities of the position of Manager should develop which cannot be adequately handled by other telegraphers then on duty in the office, the incumbent of the position will remain on duty to the extent needed."

The above language lends some support to the Claimant's position that all Saturdays will not involve 8 hours of work for the Manager. But the provision goes on to state, without limitation, that the Carrier may require 8 hours of work when the Manager is needed for work that cannot be handled by other telegraphers. On the dates asserted in the claim, no other telegraphers were on duty, so that the Manager could be required to perform the work that was needed.

Such a situation is clearly within the exception to the 4-hour average that is provided in the Supplement "D" language. It can only follow that the contract does not support the instant 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: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.

