Award No. 38
Docket No. 38

MOP File 380-1055-151
CRT File 1164-54

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. The Carrier violated the agreement between the parties when it failed to permit F. J. Schoolman, the regularly assigned late Night Chief Operator at Kansas City Relay Office to work his rest day, Thursday, July 1, 1954, after having notified him to work on each Thursday, since the inauguration of the Forty-Hour Week Agreement, and required or permitted Telegrapher L. F. Sharp, an extra man, who had completed five work days and 40-hours of his work week on the Rest Day Relief Position, Kansas City Relay Office, to perform the rest day relief service on late Night Chief Operator's position at Kansas City Relay Office.

2. The Carrier shall be required to pay F. J. Schoolman for Thursday, July 1, 1954, on the basis of eight (8) hours at the time and one-half rate.

OPINION OF BOARD: We are concerned here with a claim in behalf of one F. J. Schoolman for 8 hours at the punitive rate for Thursday, July 1, 1954, account his not being permitted to perform rest day work on the position of Late Night Chief Operator, his regularly assigned position. The said position of Late Night Chief Operator was a 7-day position with Thursday and Friday as rest days.

An employe named L. F. Sharp, an extra employe, was assigned a rest day relief assignment ordinarily held by an employe named Macan, who was then on vacation. Insofar as this dispute is concerned, Sharp and Macan may be considered as one individual.

The rest day relief assignment had a work week commencing with Saturday, with Thursday and Friday as assigned rest days. It is apparent from the record that the claimant here had, heretofore, been working his Thursday rest day as per instructions from respondent pending notification to the contrary.

The Organization here relies on Rule 8, Section 2, paragraphs (h), (i), (j) and (k). The Organization asserts that Rule 8-2(h) specifically states that an extra employe will have as his rest days the regular rest days of the position to which he is assigned and that in the instant case Telegrapher Sharp, having worked a rest day relief assignment with Thursday and Friday as rest days, was not entitled to work the rest day of the claimant's position since he had worked 40 hours of what was a regular assignment, thus being entitled to the rest days of the said regular assignment and not entitled to perform the work on the date in question, which was a

rest day of claimant's regular assignment, for which reason punitive pay is here proper since the claimant would have been entitled to time and one-half for the work performed on his day of rest, had he been permitted to work same.

The respondent asserts that the regular assignment of the claimant's position was not changed within the meaning of Rule 8, Section 2(k), when he, the claimant, was not permitted to work the first rest day of said assignment, which was worked by employe Sharp.

The respondent took the position that the claim here constituted a demand that a regularly assigned employe be worked on his rest day in contravention of both the spirit and letter of the 40-hour week and that Rule 8, Section 2(h), is not here pertinent since the rule applies only to an extra employe taking the assignment of a regular employe and cannot be said to properly apply after such extra employe has been released from such assignment.

It was further contended that employe Sharp here was an unassigned employe within the meaning of Rule 8, Section 2(i), whose work week constituted a period of seven consecutive days starting with Monday, and that, as such, his rest days did not have to be consecutive.

It is clearly evident here that Telegrapher Sharp was an extra employe who was filling a regularly scheduled relief assignment which belonged to employe Macan who was then on vacation; thus, for the period in question, L. F. Sharp became a regularly assigned man on the said rest day relief assignment with Thursdays and Fridays as duly assigned rest days. Rule 8, Section 2(h), clearly provides that extra employes taking the assignment of a regular employe (in this case, Macan) will have as their days off the regular days off of that assignment (Macan's rest day relief assignment with Thursday and Friday assigned rest days.

The Thursday's work in question was clearly an unassigned day of claimant Schoolman's regular assignment, as well as assigned rest day of the regular relief position which employe Sharp was holding and to which he was entitled to take as a rest day within the meaning of Rule 8, Section 2(h). It is likewise true that the Thursday in question was "not a part of any assignment" within "that week" within the meaning of Rule 8, Section 2(j). This Thursday constituted an unassigned day on which work was required to be performed and which was not here performed by an extra unassigned employe who did not otherwise have 40 hours of work. Thus, it was clearly work which was required to be performed on an unassigned day of the claimant's regular assignment, and which claimant was entitled to perform within the meaning of the said Rule 8, Section 2(j).

In accordance with prior awards, the pro rata rate is the appropriate penalty for the violation of the agreement under conditions here present, so the claim will be sustained only to the extent indicated.

For the reasons set out, this claim is meritorious.

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FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier violated the effective agreement.

AWARD

Claim sustained at the pro rata rate.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
July 26, 1956