Award No. 39
Docket No. 39

MOP File 380-1055-154
ORT File 1229

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. Carrier violated the terms of the agreement between the parties when on Saturday, May 14, and Sunday, May 15, 1955, it failed to compensate Olive Warren at the rate of time and one-half for 8 hours' work at "GM" Office, St. Louis, Missouri, on the rest days and instead paid her at the pro rata rate of the position worked.

2. Carrier shall be required to pay Olive Warren the difference between the pro rata rate and the rate of time and one-half for the 8 hours' work performed on May 14th and 15th, 1955.

OPINION OF BOARD: This claim concerns the request of claimant for the difference between the pro rata and the punitive rate for work performed on May 14 and 15, 1955, account allegedly working on her rest days. Claimant was an extra telegrapher assigned to position #9 in the Relay Office with a work week beginning on Monday, with Saturday and Sunday as rest days. Her work week began on Monday, May 9, and she worked May 9, 10, 11, 12 and 13 on a position designated as #9. On Friday and Saturday, May 14 and 15, the dates which form the basis of this claim, the claimant worked the position of Late Night Chief Operator and was paid therefor at the straight time rate.

The Organization alleges that Rule 8, Section 2(a), (h), (i) and (k), as well as Rules 9 and 10(h), were contravened by the respondent in not compensating the claimant for work performed on rest days on both position #9 and that of Late Night Chief Operator, as well as for the sixth and seventh days of continuous work performed by claimant.

The Organization took the position that the claimant here took the assignment of the regular employe on position #9 within the meaning of Rule 8, Section 2(h), and, after working 5 days on such position, was entitled to the regular rest days of the assignment, the same being Saturday and Sunday, May 14 and 15, and further that, within the meaning of Rule 10(h), the claimant here was entitled to be paid at the punitive rate for work performed in excess of 40 hours in the work week or, putting it in another way, for work performed on the 6th and 7th days.

The respondent here denies the validity of this claim both on the basis of a purported Memorandum of Agreement between the parties dated December 4, 1951, as well as the effective rules of the agreement.

Insofar as the rules of the agreement are concerned, the respondent asserts that claimant here was properly compensated in light of Rules 14(f) and 10(h) of the effective agreement in that Section 14(f) specifically directs that senior extra employes, when available and competent, who are not otherwise assigned, shall be used preferentially and, further, that 10(h) specifically provides that no work in excess of 40 straight time hours in any work week will be paid for at the punitive rate when such work is performed by an employe moving from one assignment to another or from an extra or furloughed list.

The respondent asserts that that situation existed here, namely, that the claimant worked Monday through Friday on position #9, at which time she moved to the position of Late Night Chief Operator and there performed work on the subsequent Saturday and Sunday.

An examination of 8-2(i) reveals that a work week for unassigned employes, as the claimant here was, shall mean a period of 7 consecutive days starting with Monday. The claimant here worked an assignment designated as position #9 for five consecutive days commencing with Monday and worked the immediate following Saturday and Sunday, thus working seven consecutive days of one calendar week.

On the basis of work performed on the 6th and 7th days of a work or calendar week, this claim would be good were it not for the specific provision in Rule 10(h) which states that work in excess of 40 straight time hours in any work week will not be paid for at the punitive rate where such excess work is performed by an employe moving from one assignment to another. It cannot be questioned that the first five days of seven consecutively worked by this claimant, who, while admittedly was an unassigned or extra employe, was worked on position #9, while the sixth and seventh days so worked were worked on a position designated as Late Night Chief Operator.

We are of the opinion, therefore, that the claimant was properly compensated within the meaning of both Rule 8, Section 2(i), and Rule 10(h).

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 did not violate the effective agreement.

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AWARD

Claim denied.

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