

Award No. 41
Docket No. 41

MOP File 380-1533
ORT File 1191

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 in effect between the parties when it required C. O. Schutte to suspend work on his regular relief assignment, Plattsmouth, Nebraska, and required him to assume the duties of the first shift Telegrapher-Clerk's position, Omaha, Nebraska, on Saturday, January 15, 1955.
2. Carrier shall now compensate C. O. Schutte for 8 hours at the pro rata rate of the position of Agent-Telegrapher, Plattsmouth, Nebraska, which he was not permitted to work on January 15, 1955.

OPINION OF BOARD: This docket concerns a claim for 8 hours at the pro rata rate of the Agent-Telegrapher's position at Plattsmouth, Nebraska, accruing claimant allegedly being required to suspend work on his regular relief assignment at this location and required to perform the duties of the first shift Telegrapher-Clerk position at Omaha on Saturday, January 15, 1955.

The Organization takes the position that the claimant here, as the regular occupant of the relief assignment which included work of the position of Agent-Telegrapher at Plattsmouth on the date in question, was improperly required to suspend work on his position and work that of another assignment in contravention to Rule 10(e), and cites Award 5473 of the Third Division of the National Railroad Adjustment Board.

The Organization further contended that there was no emergency involved within the meaning of the rule by virtue of the pending investigation concerning another employee.

The respondent asserted that the claimant here was neither required to suspend work nor absorb overtime within the meaning of Rule 10(e), pointing out that he worked all the regular hours of the position he was filling on the date in question.

The respondent asserted that it was forced to work the claimant in the manner it did here by virtue of the fact that under Rule 15(d) it was required to relieve the occupant of the position which the claimant filled on the date in question to be present at an investigation of another employee.

The respondent further contended that an employee holding a regular position might be required to perform work on another position and forego work on his own position provided he was paid the highest rate of the two positions within the meaning of Rule 5(a).

We are of the opinion that Rule 5(a) of the effective agreement pertains to two types of service--(1) employees holding regular positions and who are required to perform emergency service, and (2) employees holding regular positions who are required to perform relief service at away-from-home stations.

The Board is of the further opinion that Rule 10(e) is a prohibitory rule in that (1) employees will not be required to suspend work during regular hours, or (2) employees will not be required to absorb overtime. The Board is of the opinion that there was no emergency existing on the date in question within the meaning of the rule as written or as it has been applied on this property.

Rule 5(a), as we see it, clearly provides that an employee holding a regular position (which the claimant here held) may be required to perform relief service away from his home station.

On the date in question, claimant here performed his service at Omaha. His regular assignment was to perform service at Plattsmouth. The service performed at Omaha on the date in question cannot be said to be relief service performed at an away-from-home station within the meaning of Rule 5(a) since Omaha was obviously the claimant's home station. This being true, and in light of our interpretations of Rule 10(e), that is, that an employee may not be required to suspend work during regular hours, we conclude that the claimant here was improperly assigned on the date in question.

For the reasons stated, this claim is meritorious.

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

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

That the Carrier violated the effective agreement.

AWARD

Claim sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith
Livingston Smith - Chairman

C. O. Griffith
C. O. Griffith - Employee Member

G. W. Johnson
G. W. Johnson - Carrier Member



St. Louis, Missouri
July 31, 1956