

Award No. 50
Docket No. 50

MOP File 380-1407
ORT File 1049-52

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 rules of the agreement when A. R. Brown was denied one day's pay he lost on September 28, 1952, transferring from Night Chief Operator's position, Monroe, Louisiana, to which he had been diverted to perform emergency service back to his own position rest day relief operator, Monroe, Louisiana, because of the federal Hours of Service Act.
2. Carrier shall now compensate A. R. Brown for 8 hours at the straight time rate of the relief position, Monroe, Louisiana, for September 28, 1952.

OPINION OF BOARD: Claim is here made in behalf of one A. R. Brown whom the Organization asserts was occupying the rest day relief position at the Monroe Relay Office and who allegedly lost one day's pay account transferring from Night Chief Operator's position back to his own rest day relief position because of the federal Hours of Service Act, which action on the part of the Carrier is in contravention of Rule 5(a), Section 1(f) of Rule 8, and Rules 10(e) and 19(b).

The Organization pointed out that beginning on September 17, 1952, the claimant here was required to perform emergency service within the meaning of Rule 5(a) and that, by virtue of such rule, the claimant here had no choice other than to transfer from the regular relief position to which he was assigned to that of Night Chief Operator, and that when the position of Late Night Chief Operator was filled by an employe named Warren under Rule 14(e) the claimant here, through no fault of his own, was not permitted to return to and work the regular relief position on September 28.

The Organization pointed out that the claimant here was entitled to return to his relief assignment from which he had been moved by the Carrier and that, even though he were to be considered on the date in question as an extra employe, he would nonetheless, be entitled to work the rest day of the Manager's position since he was, on that date, a qualified extra man who had not already had 40 hours' work in his work week.

The respondent here counters with the statement that the claimant here was not entitled to receive 8 hours at the pro rata rate for September 28, 1952, since he was not arbitrarily moved from the Night Chief position and assigned to the Telegrapher position by the Carrier, but that the move of the claimant from one position to the other was brought about by other employes within the office exercising their seniority under Rule 14(e).

The respondent further asserts that Rule 19(b) is not here applicable by virtue of the fact that the time lost, if any, by the claimant was not due to the Hours of Service Act but due to the fact that he was detached from his regular relief position by the exercise of seniority on the part of other employes and was, therefore, not scheduled to work his position on the date in question, and that the claimant's contention, if sustained here, would result in the finding that a junior employe should be worked on a rest day to the prejudice of a senior employe who was then the incumbent of the position.

There is no dispute as to the pertinent facts of record here. The regular occupant of the Night Chief position with assigned hours 4:00 p.m. to midnight was absent from his position due to illness. The Carrier here, due to the emergency and within the meaning of Rule 5, moved the claimant from his regular rest day position and placed him on the Night Chief's position vacancy created by the illness of the regular occupant. The claimant here worked the position of the Night Chief continuously from the date to which he was assigned it on September 17 through September 27. Due to the exercise of seniority, there then took place a movement within the meaning of Rule 14(e) by which Late Night Chief Warren moved to the position of Night Chief and the occupant of the Telegrapher's position (Crockett) moved to the position of Late Night Chief. Prior to the date in question, due to the fact that there were only enough employes at this location to fill all the positions in question, the occupants of each position had been working both the 5 assigned days and the 2 rest days of each position. When the movement of employes occurred, the last day on which the claimant worked the Night Chief position, that is, September 27, he worked from 4:00 p.m. to 12:00 midnight. The regular relief position to which the Organization contends he should have been permitted to return had assigned hours commencing at 8:00 a.m. on Sunday, September 28, thus placing at issue the Hours of Service Act.

There can be little doubt but that claimant Brown was moved from the relief assignment, which he ordinarily held and which was on September 28 scheduled to work a rest day of the Manager's position, to the position of Night Chief was done properly under Rule 5(a). There can be no further doubt but what the movement of employes Warren and Crockett was fully permissible within the meaning of Rule 14(e).

The sole question to be resolved here is whether or not the exercise of seniority by employes Warren and Crockett left claimant Brown in a position that he could properly request to fill the rest day of the Manager's position then held by employe Allen, or whether or not Allen, as the regular occupant of the Manager's position, was entitled to work the same at the punitive rate. The claimant here, upon the exercise of seniority by employes Warren and Crockett, was assigned by the Carrier to fill the position of Telegrapher (that position formerly occupied by employe Crockett), which was a 5-day position of which September 28 was not one of the five assigned days.

We are of the opinion that it matters not, in this instance, whether it is considered that claimant Brown here was entitled to return to his regular rest day relief assignment or whether he was detached from his regular relief

position and not scheduled to work that position on the date in question. September 28 was the rest day of the Manager's position and was worked by employe Allen. If Brown were to be considered as having a right to the relief day assignment, he would have been entitled to work it, but we do not think, nor do we find and hold, that he had this right in this instance. Rather, when he was detached from the Night Chief position by the exercise of seniority on the part of Warren and Crockett and thus returned to the position of Telegrapher, he then and there assumed the status, that is, on September 28, of an extra employe since the Telegrapher's position was not scheduled to work until September 29. As an extra employe, he obviously had not had 40 hours' work within his work week and, as such, was entitled to work the rest day of the Manager's position. There is a long line of decisions which hold that rest day work belongs (1) to the regular rest day relief employe, (2) to the qualified extra man who has not had 40 hours of work in his work week, and (3) to the regular employe who works the position on the regular assigned days thereof. As an extra employe who had not otherwise had 40 hours' work in the work week, the claimant was entitled to perform the rest day service on the Manager's position on the date in question.

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,

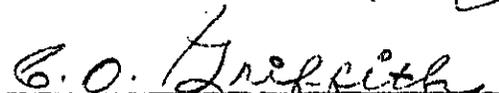
That the Carrier violated the effective agreement.

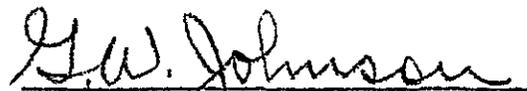
AWARD

Claim sustained for 8 hours 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
August 9, 1956