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DEC 15 1960  
J. BERTA

SPECIAL BOARD OF ADJUSTMENT NO. 226

THE ORDER OF RAILROAD TELEGRAPHERS  
vs  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

Mr. Riley contends he himself was entitled to 8 hours plus 4 hours overtime, or a total allowance of 12 hours instead of 10½ hours. He appears to believe that Rule 9 (a) defining the basic day's work at 8 hours is applicable and that he should have been credited with 8 hours straight time instead of 7 hours straight time, the number of hours he actually worked.

Rule 9 (a) is not applicable. It does not guarantee 8 hours actual work or 8 hours pay. The pay for the 7 hours Mr. Riley actually worked on his rest day is determined by Rule 26 (m) V. This rule guarantees that he shall be paid for a minimum of 8 hours. If he had actually worked only 1 hour or 5 hours, he would have been entitled to pay for 8 hours. But since he actually worked 7 hours he was entitled to straight time pay for 7 hours and overtime pay for 3½ hours. No rule guarantees him 8 hours straight time plus 4 hours overtime.

AWARD:

Claim denied.

/s/ Daniel C. Rogers  
Daniel C. Rogers, Chairman  
Attorney at Law  
211-212 Commercial Trust Company  
Fayette, Missouri

DISSENTING  
W. I. Christopher, Employee Member  
Deputy President, ORT  
3860 Lindell Blvd.  
St. Louis 8, Missouri

/s/ A. F. Winkel  
A. F. Winkel, Carrier Member  
Vice President - Personnel  
Missouri-Kansas-Texas Railroad  
Company  
Missouri-Kansas-Texas Railroad  
Company of Texas  
Dallas 2, Texas

Dallas, Texas

June 7, 1960

November 7, 1960

EMPLOYEE MEMBER'S DISSENT TO AWARD NO. 40

The undersigned dissents from the Findings and Award because it does not square with the Agreement at any point. Claimant was called out on Tuesday rest day for seven hours' service. Rule 26, Section 1(m) provides:--

"II. Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following basis:

"A. (1) Employees occupying positions requiring a Sunday Assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work."

Section 1(m) goes further, providing:

"V. Service rendered by an employee on his assigned rest day or days filling an assignment which is required to be worked or paid eight hours on such day will be paid for at the overtime rate with a minimum of eight hours."

Claimant was required to perform service on his assigned rest day within the hours of his regular week day assignment.

Claimant occupied a position requiring a Sunday assignment of the regular week day hours, i. e., a seven-day position.

The required service was on his regular position and was brought about by the absence of the regularly assigned relief employee.

Claimant rendered service on his assigned rest day on an assignment that was required to be worked or paid eight hours.

All of the conditions entitling claimant to a minimum of eight hours' pay at time and one-half rate prevailed on this occasion. This minimum has been in effect, so far as the Telegraphers' Agreement is concerned, for many years. The above rules are extensions of the "Rest Day Rule" effective March 1, 1945, Mediation Case No. A-2070, establishing a six-day week for Telegraphers. Section 1(a) of Article 1 of that agreement provided:

"An employee occupying a position requiring a Sunday assignment of the regular week day hours shall be given one (1) rest day without pay in each consecutive period of seven (7) days. \*\*\* If such employee is required to work on his assigned rest day, he shall be compensated for such service at the rate of time and one-half with a minimum of eight (8) hours."

This fact was recognized by the Forty-Hour Week Committee (of the parties) in its Supplement to Decision No. 5 adopted March 22, 1950, wherein it stated:

"Decision No. 5, rendered on November 11, 1949, established principles to be used for the purpose of disposing of disputes under Article II, Section 3 (b) - Service on Rest Days - of the March 19, 1949 Agreement. The Committee, with David L. Cole sitting as referee and a member thereof, decides that the following rule conforms with the principles established in Decision No. 5 as applied to the agreements herein specified and shall be incorporated in individual Telegraphers' Agreements which contain the terms of the Mediation Agreement of July 13, 1945, Case A-2070, or Telegraphers' rules containing substantially the same provisions covering compensation for rest day and Sunday work \* \* \* ."

The dispute centered on but one issue. Claimant worked 7 hours on his rest day. The Agreement specifies that he be paid a minimum of eight hours at time and one-half rate because he was an employee occupying a position requiring a Sunday assignment of the regular week day hours. The Carrier recognized that the time and one-half rate was applicable by allowing claimant 7 hours at time and one-half rate but disputed payment of a minimum of eight hours although the rate and the minimum are contained in the same rule.

The majority has engaged in mathematical double-talk by attempting to calculate a positive time and one-half provision into a pro rata formula. Not even the Carrier indulged in such gymnastics. The Carrier, however, in its submission cited Rule 26, Section 1 (m) V, and argued that it contemplated that an employee rendering service on his assigned rest day or days which is required to be worked or paid eight hours must fill the assignment for the entire day. Of course that is not so and never was either under the Rest Day Rule or the Forty Hour Week rules. The Rest Day Rule specified the rate of time and one-half "with a minimum of eight (8) hours;" Rule 26, Section 1 (m) II, also specifies the rate of time and one-half "with a minimum of eight hours;" and lastly, Section 1 (m) V specifies the overtime rate "with a minimum of eight hours." In order to adopt the Carrier's reasoning these words would stand deleted. The majority in its Findings plainly disregarded the minimum clauses of these rules. Notwithstanding, it stated:

"The pay for the 7 hours Mr. Riley actually worked on his rest day is determined by Rule 26 (m) V. This rule guarantees that he shall be paid for a minimum of 8 hours. If he actually worked one hour or 5 hours, he would be entitled to pay for 8 hours."

Now measure the above words with the rest of the statement:

"But since he actually worked 7 hours he was entitled to straight time pay for 7 hours and overtime pay for 3½ hours."

Mr. Riley sought to be paid on the basis of a minimum of 8 hours at time and one-half rate. His straight time rate was \$2.3375 per hour. The time and one-half rate was \$3.5062 per hour which for 8 hours would amount to \$28.0496.

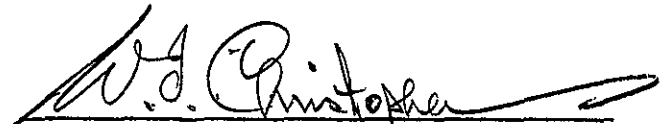
The Findings state that he was entitled to 7 hours at straight time which amounts to \$16.3625; also overtime pay for 3½ hours which amounts to \$12.2717, for a total of \$28.6342 as against the \$28.0496 claimed. In other words claimant sought 58¢ less than the majority says he was entitled to.

The majority goes on to add that:

"No rule guarantees his 8 hours straight time plus 4 hours overtime."

Eight hours straight time plus 4 hours overtime would amount to \$32.7248. Claimant did not contend at any time for such a payment. He asked to be paid for his rest day work "on the basis of a minimum of eight (8) hours for this date." This amounted to \$28.0496. The majority said he was entitled to \$28.6342. Yet the claim has been denied, with Mr. Riley receiving only 7 hours pay in the amount of \$24.54 in the face of positive rules assuring him of a minimum of eight hours at time and one-half rate - the only rate applicable for service on rest days.

The award is raddled with misunderstanding and error and serves no purpose other than to perpetuate a grave injustice on the claimant.

  
W. I. Christopher, Employee Member