

SPECIAL BOARD OF ADJUSTMENT NO. 266

406-3

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

AWARD NO. 86
CASE NO. 119
343A4/ 2-3
(147-59)

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

The Carrier violated the current ORT Agreement, when, in changing the rest days and workweek of C. E. Folk, Agent-Operator, Vestal, N.Y., assigned hours 6:50 AM - 2:50 PM, Lunch 11 - 11:20 AM, hourly rate \$2.216 Basic and \$2.336 current, it suspended him from work Saturday, May 24, Sunday, May 25, 1958, and caused him to work on May 26 and 27, 1958, accrued rest days of workweek starting on Wednesday, May 21, 1958, shall because of this violation compensate C. E. Folk a day's pay (\$18.688) on May 24 and 25, 1958 account not permitted to work on said dates, work days of his position and, the overtime rate i.e., 4 additional hours (\$9.344) on May 26 and 27, 1958.

OPINION OF BOARD:

Claimant Folk was regularly assigned to the seven-day position of Agent-Operator at Vestal, New York, his rest days being Monday and Tuesday. In May 1958 the Claimant pointed out to the Chief Dispatcher that Agent Corbin at Owego was junior to the Claimant but had rest days of Saturday and Sunday. Claimant asked if the relief assignment, which covers both positions, could be rearranged so that the Claimant could have Saturday and Sunday off. The Carrier states that the Chief Dispatcher recognized that "wherever possible a senior man should be given more desirable rest days, i.e., Saturday and Sunday, and so arranged for this change, at the same time recognizing that for operating reasons at a station such as Vestal, the requirements of the service would be better met by having the regular agent on duty, Monday through Friday, when most of the freight business is handled..."

On May 17, 1958 Claimant Folk was notified that effective Saturday, May 24, 1958 the rest days of his position would be changed from Monday and Tuesday to Saturday and Sunday. As a result of this notice, the Claimant was scheduled to be off duty on Saturday and Sunday, May 24 and 25. He then worked five consecutive days beginning Monday, May 26. Claim is made that Folk is entitled to a day's pay for Saturday and for Sunday, May 24-25, when he was off duty; and that he also is entitled to time and one-half pay for time worked on Monday and Tuesday, May 26-27, instead of the pro rata rate at which he was compensated.

In previous awards dealing with changes in an employee's workweek we have consistently held that his newly assigned workweek does not begin until the first work day of said new work week. In the subject instance, Claimant's new work week did not commence until Monday, May 26, 1958. Saturday and Sunday, May 24-25, therefore, were scheduled work days of his old workweek, during which he was entitled to work. The following Monday and Tuesday were not overtime days for the claimant. They were regular work days of his new workweek schedule. In view of the foregoing, we would hold under ordinary circumstances that Claimant was improperly deprived of a day's

pay on Saturday and on Sunday, May 24-25.

The question arises as to whether Claimant is estopped from contending for this pay because he had requested a change in his assigned workweek in order to be off on Saturdays and Sundays. We do not think that he is. The Carrier could have made his new workweek schedule effective as of Monday, May 26, instead of the previous Saturday. Nothing in the record indicates that Claimant requested that his new schedule be made effective on the date selected by the Carrier. We therefore will sustain this claim to the extent of the pay requested for May 24 and 25, 1958. The requested compensation for May 26 and 27, 1958 is denied.

AWARD:

Claim sustained in part and denied in part as indicated in the above opinion.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

/s/ W. I. Christopher
W. I. Christopher, Employee Member

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

New York, N. Y.
December 3, 1959.

