

Award No. 42
Docket No. 42

MOP File 380-1534
ORT File 1192

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 failed to use J. F. Stastka, the regularly assigned Agent-Telegrapher at Plattsmouth, Nebraska, on Saturday, January 15, 1955, who was available and entitled to perform the work.
2. Carrier shall now compensate J. F. Stastka for 8 hours at the time and one-half rate of the Agent-Telegrapher's position at Plattsmouth, Nebraska, for January 15, 1955.

OPINION OF BOARD: This claim arises out of the same set of circumstances upon which Docket No. 41 was predicated. Here we are concerned with the allegation that the claimant, J. F. Stastka, was not used by the Carrier on Saturday, January 15, 1955, when said Stastka was available and entitled to perform the work.

The Organization pointed out that said claimant was the regularly assigned Agent-Telegrapher at Plattsmouth with a work week of Monday through Friday, with Saturday and Sunday as assigned rest days, and that the claimant here was entitled to work the Saturday in question, which was an assigned day of a relief assignment owned by employe Schutte, with whom we were concerned in Docket No. 41.

The Organization contended that Rule 8, Section 2(j), and Section 1 of Rule 9, and Rule 10(e), were violated when the claimant was not assigned to perform the relief day work in question, which was, in substance, the sixth day of a 6-day position.

The respondent here countered with the contention that Section 2 of Rule 8 contained no provision prohibiting the action taken here, and that in this case the claimant had five days of work, thus there was no obligation on their part to use him on a sixth day when his services were not required.

It was further contended that the claimant here was not suspended during the regular hours of his regular assignment or during the regular hours of any other assignment since on the date in question (his rest day) he had no assigned hours, and that the blanking of the Agent-Telegrapher's position, with regard to employe Schutte, did not confer upon the claimant here any right to work, and that Section 1 of Rule 9 pertains solely to the method of computing pay for employes who are required to work on their assigned rest days and is not here applicable since the claimant was not "required to work on his assigned rest day".

As stated above, this claim arises out of the same factual situation as that with which we were concerned in Docket No. 41. The parties here are in

substantial agreement that there existed no emergency within the meaning of the rule or its application on this property. Rule 10(e) is clear and without ambiguity. It is what is commonly known as a prohibitory rule insofar as the Carrier is concerned and in essence provides (1) that employees will not be required to suspend work, and (2) that employees will not be required to absorb overtime. The work in question was not suspended during regular hours since such hours were not the hours of his (claimant's) regular assignment. There is likewise no showing by the Organization that the claimant was required to absorb overtime on his or any other assignment.

The day in question here was an assigned day of a regularly assigned relief position and was not an unassigned day within the meaning of Rule 8, Section 1(2-j). Likewise, there was no work required to be performed on the date in question by the respondent.

Since we have held that claimant Schutte, in Docket No. 41, was improperly relieved from the Agent-Telegrapher position at the location in question, we cannot here find that claimant Stastka had any right to work the position which was there blanked on that day.

For the reasons stated, this claim is without merit.

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

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934.

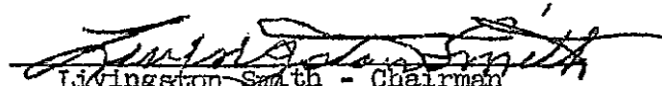
That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

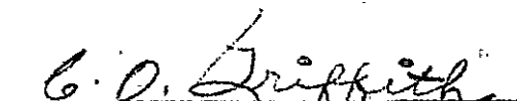
That the Carrier did not violate the effective agreement.

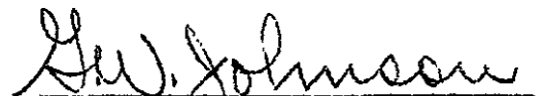
AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 117


Livingston Smith - Chairman


C. O. Griffith - Employee Member


G. W. Johnson - Carrier Member

St. Louis, Missouri
July 31, 1956

