Award No. 46
Docket No. 46

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380-1622	1224
380-1634	1233
380-1637	1234
380-1638	1235

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:

CASE 1

1. Carrier violated the terms of the agreement between the parties when on Wednesday, July 13; Tuesday, July 19; Wednesday, July 20, Tuesday, July 26; Wednesday, July 27; Tuesday, August 2; and Wednesday, August 3, 1955, it failed to use I. M. Campbell, the regularly assigned Assistant Chief Operator, "GM" Relay Office, St. Louis, in the absence of the regular relief employe or an available extra employe.

2. Carrier shall compensate I. M. Campbell for 8 hours at the time and one-half rate for July 13, 19, 20, 26, 27 and August 2 and 3, 1955.

CASE 2

1. Carrier violated the terms of the agreement between the parties when on Sunday, July 24; Monday, July 25; Sunday, July 31; Monday, August 1, and Monday, August 8, 1955, it failed to use F. W. Newell, the regularly assigned day Chief Operator, "GM" Relay Office, St. Louis, in the absence of the regular relief employe or an available extra employe.

2. Carrier shall compensate F. W. Newell for 8 hours at time and one-half rate for July 24, 25, 31, and August 1 and 8, 1955.

CASE 3

1. Carrier violated the terms of the agreement between the parties when on Sunday, July 17, 1955, it failed to use A. T. Young the regularly assigned Assistant Manager "GM" Relay Office, St. Louis, in the absence of the regular relief employe or an available extra employe.

2. Carrier shall compensate A. T. Young for 8 hours at the time and one-half rate for July 17, 1955.

CASE 4

1. Carrier violated the terms of the agreement between the parties when on Monday, July 18, 1955, it failed to use M. S. Varn, the regularly assigned Assistant Night Chief Operator "GM" Relay Office, St. Louis, in the absence of the regular relief employe or an available extra employe.

2. Carrier shall compensate M. S. Varn for 8 hours at time and one-half rate for July 18, 1955.

CASE 5

1. Carrier violated the terms of the agreement between the parties when on Thursday, July 14, 1955, it failed to use V. I. Mason, the senior idle extra employe on position No. 10 "GM" Relay Office, St. Louis, in the absence of the regular relief employe.

2. Carrier shall compensate V. I. Mason for 8 hours at the pro rata rate of position No. 10 for July 14, 1955.

OPINION OF BOARD: This docket concerns the claims of five named individuals that the Carrier violated Rule 8, Section 2(d), (e), (j); Rule 9, Section 1, paragraph II-A(1); and Rule 14(f), when on the enumerated dates the Carrier failed to use four of them to fill their regularly assigned positions in the absence of the regular relief employe. The fifth claim concerns the alleged failure of the Carrier to assign the senior idle extra employe to fill a position in the absence of the regular relief employe.

The Organization asserts that the positions in question were 7-day positions within the meaning of Rule 8-2(d), with assigned rest days which were filled by the use of regular assigned relief employes who were not available on the dates in question. The Organization pointed out that the Carrier had made the regular relief assignments in accordance with Rule 8-2(e) and that, in the absence of the regular relief employes in the first four claims or the senior idle extra employe in the fifth claim, the Carrier was required to have the work performed by the regular employes or the senior idle extra employe within the meaning of Rule 8, Section 2(j).

The Organization asserted that the right of a regular employe or a senior idle extra employe (when available) to occupy a 7-day position to an assignment on a rest day was not subject to question within the meaning of the above cited rules nor under Awards 4244, 4245, 4247, 4575 and 6524.

The respondent took the position that none of the claims with which we are concerned in this docket were valid for the reason that no employe was used on the dates in question and that Rule 8, Section 2(j), was applicable only in cases where work was performed on the position when such days were unassigned days of the position.

The respondent pointed out that each of the positions in question was assigned to a regular rest day relief employe and that no rule of the agreement

required the Carrier to fill a 7-day position on any day where the regularly assigned occupant to the position on the date in question was absent due to reasons best known to him.

The respondent further asserted that the awards relied upon by the Organization had to do with operations prior to September 1949 in regard to positions necessary to the continuous operation of the railroad which were rendered meaningless by the adoption of the rules contained in the effective agreement which were incorporated as a result of the National 40-Hour Week Agreement.

As stated above, all of the positions here involved are 7-day positions to which employes have been regularly assigned on a 5-day basis with two days of rest and to which regular relief assignments have been applied and filled.

The contention of the Organization in each of these claims can be summed up by this proposition -- is the Carrier required to use the regular occupant of a position on one of his rest days when the regular relief employe is absent and there is no senior idle extra employe and/or is the Carrier required to use a senior idle extra employe in the absence of a regular relief employe?

The awards relied upon by the Organization which required and made mandatory the filling of 7-day positions were rendered prior to the National 40-Hour Week Agreement and inclusion of certain rules in the effective agreement effectuating such National Agreement.

We are of the opinion that Rule 8-2(j) is not applicable because the work here involved was not work on an unassigned day and that where a "vacancy" exists on a rest day of a 7-day position where such "vacancy" does not occur by any overt act of the Carrier but, rather, due to the illness or absence of the regularly assigned relief employe, need not be filled but may be blanked.

We are of the opinion that Awards 6691 and 5589 enunciated a principle which is controlling here when it was said:

Award 5589

"... the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions, that is, where the blanking is not due to an affirmative act of the Carrier but because of the employe's failure to report for duty ... The foregoing indicates that it is implicit in the Forty-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty. To go further and say that where such employes do not report for duty, Carrier must work other regularly assigned employes or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties ... "

Award 6691

"... The real issue in this case is, therefore, whether the 40-Hour Agreement prohibits the Carrier from blanking the assignment which was vacant because of the illness of its occupant. As to this, the Employes contend, first, that under the Agreement that was in effect prior to

"September, 1949, the rule was that 'position necessary to the continuous operation of the Carrier', (i.e., the duties of which were necessary seven days a week) could not be blanked; for to blank any part of them would mean that the position was not necessary on all seven days. They argue, secondly, that the Wire Chiefs' positions in this case being seven day positions within the meaning of the Note and paragraph (d) of Rule 4, the same rule is applicable under the 40-Hour Agreement.

"We cannot agree with this contention. There is no rule in the 40-Hour provisions of the Agreement which prohibits blanking a position when the occupant is absent because of illness, or other reason of his own . . . "

For the reasons above stated, we are of the opinion that none of these claims are valid.

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 did not violate the effective agreement.

AWARD

Cases 1, 2, 3, 4 and 5 denied.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
July 31, 1956