

SPECIAL BOARD OF ADJUSTMENT NO. 132

PARTIES:

THE ORDER OF RAILROAD TELEGRAPHERS  
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 76

STATEMENT  
OF CLAIM:

1. Carrier violated the agreement between the parties hereto when on November 29 and 30, 1953, it paid Operator C. C. Lukehart at the pro rata rate of pay for work performed at Echo, Pennsylvania, on November 29, 1953, and at Indiana, Pennsylvania, on November 30, 1953, said dates being his relief days.

2. Carrier be required to compensate Mr. C. C. Lukehart for the difference between what he was paid at pro rata rate of pay for November 29 and 30, 1953, and what he should have been paid at the rate of time and one-half on said dates.

FINDINGS:

Claimant was an extra employee who worked an operator position with hours 10 A.M. to 7 P.M. at Indiana, Pennsylvania on Tuesday, November 24, 1953, Wednesday, November 25, 1953, Friday, November 27, 1953, Saturday, November 28, 1953, and Monday, November 30, 1953. On Sunday, November 29, 1953, he worked the operator's position at Echo, Pennsylvania from 7 A.M. to 3 P.M. The office at Indiana, Pennsylvania, was not open on Thursday, November 26, 1953, which was Thanksgiving Day. The work week of both of the above positions is Tuesday through Saturday with Sunday and Monday rest days. He was paid for his services on November 29 and 30 at the pro rata rate. He claims he should be paid at the rate of time and one-half.

Carrier resists this claim on the ground that the claimant did not fill the position for five consecutive work days.

The provision governing the disposition of this claim is found in Section 1 of an agreement made October 6, 1953 and reading in pertinent part as follows:

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An extra employee takes the assignment of a regular employee from the time he commences to fill that assignment. Until relieved from that assignment he is no longer an unassigned employee as that term is used in Section 1(i), but has as his days off the regular days off of the assignment. An extra employee who fills the assignment of a regular employee, or the assignments of more than one regular employee having the same work week, for the five consecutive work days of that assignment or assignments, will continue to hold the last assignment worked for the two succeeding calendar rest days and if worked on either or both of those rest days he will be paid at penalty rate.

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The question here involved is simply whether or not the claimant should be considered as filling the assignment of the regular employe at Indiana for five consecutive work days despite the fact that he did not work the position on Thursday, November 26, 1953. It is obvious that the parties in the above quoted provision were speaking of assigned work days as distinguished from assigned rest days. Thursday was a work day of the position under the rule but because Thursday, November 26, 1953 was a holiday the position was blanked. The blanking of the position on Thursday did not, however, alter its status as a work day. Inasmuch as claimant did not work any other assignment on that Thursday and worked the same assignment on Tuesday, Wednesday, Friday and Saturday, he should be considered as filling the Indiana assignment during the five consecutive work days of the assignment. Accordingly he should have been paid at the time and one-half rate for the Sunday and Monday rest days.

AWARD

Claims (1) and (2) sustained.

S/ Francis J. Robertson  
Francis J. Robertson  
Chairman

S/ B. N. Kinkead  
B. N. Kinkead,  
Employe Member

S/ T. S. Woods  
T. S. Woods,  
Carrier Member

Dated at Baltimore, Md., this  
26th day of April, 1957.