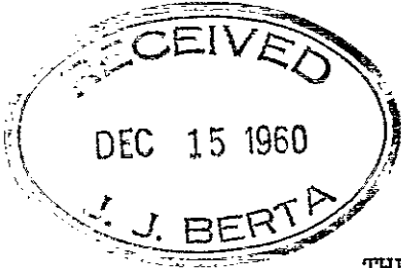


CASE NO. 13  
ORT 2496



SPECIAL BOARD OF ADJUSTMENT NO. 306

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT  
OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on The New York, New Haven & Hartford Railroad, that:

Claim No. 1

1. Carrier violated the agreement between the parties when it failed and refused to compensate Miss M. W. Flannery at the rate of time and one-half on December 31, 1956, the seventh day of her work week after having completed forty hours in her work week.
2. Carrier shall compensate Miss M. W. Flannery the difference between eight hours at pro rata and eight hours at the rate of time and one-half for services performed on December 31, 1956.

Claim No. 2

1. Carrier violated the agreement between the parties when it failed and refused to compensate E. J. Nieckarz at the rate of time and one-half on December 31, 1956, the sixth day of his work week after having completed forty hours in his work week. Carrier further violated the agreement when it required or permitted Mrs. A. Spencer on January 2, 1957 to suspend work.
2. Carrier shall compensate E. J. Nieckarz the difference between eight hours at pro rata and eight hours at the rate of time and one-half for services performed on December 31, 1956 and compensate Mrs. A. Spencer for eight hours at pro rata on January 2, 1957 because not used to perform service to which entitled.

Claim No. 3

1. Carrier violated the agreement between the parties when it required or permitted C. French on December 31, 1956 to suspend work. Carrier further violated the agreement when it failed and refused to compensate C. French at the rate of time and one-half on January 2, 1957 the seventh day of his work week.
2. Carrier shall compensate C. French for eight hours at pro rata on December 31, 1956 because not used to perform service to which entitled and the difference between eight hours at pro rata and eight hours at the rate of time and one-half on January 2, 1957 for services performed.

Claim No. 4

1. Carrier violated the agreement between the parties when it failed and refused to compensate A. J. Barkauskas at the rate of time and one-half on March 5 and 6, 1957 the sixth and seventh days of his work week. Carrier further violated the agreement when it required or permitted A. J. Barkauskas on March 7 and 8, 1957 to suspend work.
2. Carrier shall compensate A. J. Barkauskas the difference between eight hours at pro rata and eight hours at the rate of time and one-half on March 5 and 6, 1957 for services performed and for eight hours at pro rata on March 7 and 8, 1957 because not used to perform service to which entitled.

Claim No. 5

1. Carrier violated the agreement between the parties when it required or permitted G. W. Wheeler on March 6, 1957 to suspend work. Carrier further violated the agreement when it failed and refused to compensate G. W. Wheeler at the time and one-half rate on March 8, 1957 the seventh day of his work week.
2. Carrier shall compensate G. W. Wheeler for eight hours at pro rata on March 6, 1957 because not used to perform service to which entitled and the difference between eight hours at pro rata and eight hours at the rate of time and one-half on March 8, 1957 for services performed.

Claim No. 6

1. Carrier violated the agreement between the parties when it failed and refused to compensate W. Callan at the rate of time and one-half on March 13 and 14, 1957, the sixth and seventh days of his work week. Carrier further violated the agreement when it required or permitted W. Callan on March 15 and 16, 1957 to suspend work.
2. Carrier shall compensate W. Callan the difference between eight hours at pro rata and eight hours at the rate of time and one-half on March 13 and on March 14, 1957 for services performed and for eight hours at pro rata on March 15 and on March 16 because not used to perform service to which entitled."

FINDINGS:

There is conflict in the Third Division awards upon pay claims arising from changes in rest days, and to discuss them would unnecessarily lengthen these findings. Here Article IV, Section A (1) provides for changing rest days upon 72 hours written notice. Some of these claims are based upon Article 3 alleging suspension from service on new rest days which were formerly work days. The others claim premium pay under Article 6 (g) or Article 6 A for work performed on more than five days in the work week or on former rest days.

Article 3 is a daily pay guarantee in each 24 hours "except on assigned rest days". After the seventy two hour notice the assigned rest days of the position are as changed by the notice, so claims under Article 3 for suspension on those days are without merit. Similarly thereafter claims for premium pay on the former rest days under Article 6-A (Service on Rest Days) are invalid because they are no longer assigned rest days. The beginning and ending of the work week is not involved in either of such claims because the only determinative factor under both rules is the "assigned rest days".

Article 6 (g) provides as follows:

"(g) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (k) of Article 4-A."

Article 4, A, (n) is in part as follows:

"(n) - Beginning of Work Week. The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, ....."

Thus it is apparent that a change of rest days effects a change in the beginning of the work week. For the purpose of computing premium pay under Article 6 (g) it has properly been held that the former work week continues until the new one begins according to Article 4, A, (n).

In Claim No. 1 the rest days of claimant's position were changed from Sunday and Monday to Saturday and Sunday effective Monday, December 31, 1956. The claim is for premium pay on December 31st. Since that day (Monday) is the beginning of the work week after the change in rest days under Article 4, A, (n), service on that day could only be counted in the new week for the computation of premium under Article 6 (g). Because it was then no longer a rest day no premium is due under Article 6 A.

In Claim No. 2 the rest days of the position were changed from Monday and Tuesday to Tuesday and Wednesday effective December 31, 1956. Claimant Nieckarz worked Wednesday the 25th through Monday the 31st. Thus he worked six days in the old work week and is entitled to time and one-half for work on the 31st. Claim of Mrs. A. Spencer is for alleged suspension from work on January 2nd, a new rest day, so the claim is not valid.

In Claim No. 3 the rest days of the position were changed from Tuesday and Wednesday to Monday and Tuesday effective Monday, December 31, 1956. Claim is for suspension from work on Monday, December 31st, a new rest day, and for premium rate for work on Wednesday, an old rest day and the beginning of the new work week, so under the principles enunciated above the claim is not valid.

In Claim No. 4 the rest days were changed from Tuesday and Wednesday to Thursday and Friday effective Monday, March 4, 1957. Claim is for time and one-half for working on Tuesday and Wednesday, March 5th and 6th, the former rest days. Since he was off work for personal reasons on March 4th he is entitled only to time and one-half for the 6th under Article 6 (g). Claim is also made for suspension from work on the 7th and 8th. Since they were then the assigned rest days claim is not valid.

In Claim No. 5 the rest days were changed from Thursday and Friday to Wednesday and Thursday effective Monday, March 4, 1957. Claim is made for suspension from work on Wednesday the 6th, a new rest day, and for time and one-half on Friday the 8th, a former rest day and the beginning of the new work week, so the claim is not valid.

In Claim No. 6 the rest days were changed from Wednesday and Thursday to Friday and Saturday effective March 11, 1957. Claim is made for time and one-half for work on Wednesday and Thursday, March 13th and 14th. Having previously worked five days in the work week the claim is valid under Article 6 (g). Claim is also made for suspension from work on the 15th and 16th, newly assigned rest days, which is not valid.

AWARD: Claims sustained to the extent stated in the findings.

SPECIAL BOARD OF ADJUSTMENT NO. 306

/s/ Dudley E. Whiting  
DUDLEY E. WHITING, REFEREE

/s/ Russell J. Woodman  
RUSSELL J. WOODMAN, Employee Member

/s/ J. J. Gaherin  
J. J. GAHERIN, Carrier Member

DATED: October 7, 1960.