

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe, that Telegrapher V. S. Holly, Clarkdale, Arizona, be paid \$1.67 representing the difference between eight hours on November 3rd, 1936, for which he has been reimbursed, and nine hours and thirty minutes continuous time which he claimed for that date."

EMPLOYEES' STATEMENT OF FACTS: "V. S. Holly is regularly assigned to a telegrapher-clerk position, Clarkdale, Arizona, rate of pay 77c per hour, assigned hours 8:00 A. M., to 5:00 P. M., meal period 12 o'clock noon to 1:00 P. M., the Superintendent, in his notice No. 1420 dated October 17, 1936 notified Telegrapher Holly to ride train No. 236 November 3rd, 1936 to Drake, Arizona, to contact examination car for physical examination and return to Clarkdale train No. 235 the same day, Telegrapher Holly went on duty at Clarkdale 8:00 A. M., November 3rd, 1936, performing his regularly assigned duties until 9:55 A. M., (the departing time of train No. 236) at which time he proceeded to Drake, returning to Clarkdale train No. 235, arriving the latter point 5:30 P. M., at which time he was released; having been continuously at the disposal of the carrier 8:00 A. M. to 5:30 P. M., November 3rd, 1936."

CARRIER'S STATEMENT OF FACTS: "V. S. Holly was regularly assigned to a telegrapher-clerk position at Clarkdale, Arizona, rate of 77c per hour, assigned hours 8:00 A. M., to 5:00 P. M., meal period 12:00 Noon to 1:00 P. M. Superintendent's notice No. 1420 dated October 17th, 1936 (itinerary of movement of examination cars October 26th to November 4th) contained the following:

'November 3rd, Drake, including all employes concerned between Puro and Clarkdale. Operator and section foreman from Clarkdale, also section foreman, Perkinsville, to come to Drake on No. 236 and return on No. 235.'

An extra man was sent to Clarkdale to relieve Holly on November 3rd. Train No. 236 is scheduled to depart from Clarkdale at 5:10 A. M. As train did not leave until 9:55 A. M., on date in question, Holly while waiting for train handled waybilling and made contracts for shipment of cattle due out on Train 236. Extra operator performed assigned duties of position 8:00 A. M., to 5:00 P. M. Holly arrived back at Clarkdale at 5:30 P. M.

"He was paid 8 hours at 77c per hour and claims 9 hrs. 30 min."

An agreement bearing date of February 5, 1924, as to rules, and January 1, 1928, as to rates, is in effect between the parties to the dispute.

from headquarters. Any fee or mileage accruing will be assigned to the Company.'

"It is the position of the Carrier that having allowed Holly a day's pay of eight hours under Rule 17 (a) is all that is required and that the request of the committee for the payment of overtime under the circumstances referred to is a request for a new rule."

OPINION OF BOARD: As stated by the Referee in Award 134, were this a new question the disposition of the Board would be to hold that services of the nature involved in this case are such as would fairly come within the contemplation of the word "work" as used in the rules, however, the weight of authority is to the effect that it is not "work" as so used and numerous agreements have been re-written since many of these decisions were rendered without making any change to cover situations of this sort. See Award 588. Consequently the Board is indisposed to overrule this line of authorities.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934:

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

That no violation of the rules has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1938.