

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. De Vane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad Company that:

"Operator-Leverman H. A. Schrenk account instructed to attend court as a witness in behalf of the Carrier at Chicago on June 14th, 1937, be paid 13 hours, 30 minutes at the rate of time and one-half from 1:30 A. M., June 14th to 3:00 P. M., June 14th, amount \$14.37, also 8 hours minimum day account held off his regular trick, amount \$5.68, total \$20.05, in accordance with provisions of Rule 3 and 13."

EMPLOYES' STATEMENT OF FACTS: "Mr. H. A. Schrenk was the regularly assigned Operator-Leverman at 'WR' Tower, Ridgely, with regular assigned hours from 3:00 P. M. to 11:00 P. M., daily, scheduled rate of pay 71¢ per hour.

"He received a message on June 12th, 1937, instructing him to attend a court case in Chicago on the morning of June 14th. Operator Schrenk worked his regular assigned trick on June 13th, completing same at 11:00 P. M., on that date. He left home for Chicago at 1:30 A. M., June 14th, and upon his arrival at Chicago reported to representatives of the Claim Department. He was released in the afternoon in time to catch a train which returned him to his destination at 7:30 P. M., June 14th. He was unable to work his trick starting at 8:00 P. M., on that day, account did not arrive home until 7:30 P. M."

CARRIER'S STATEMENT OF FACTS: "Mr. H. A. Schrenk, regularly assigned Operator-Leverman at 'WR' Tower, Ridgely, with regular assigned hours from 3:00 P. M. to 11:00 P. M., daily, scheduled rate of pay 71¢ per hour, was instructed to attend a court case in Chicago, June 14th, 1937. Operator Schrenk worked his regular assigned trick on June 13th, completing same at 11:00 P. M., on that date. In order to arrive Chicago in time for the hearing, it was necessary for him to leave Springfield on train No. 8, due to depart from that point at 2:18 A. M. He reported for court at 9:00 A. M., June 14th, and was released between 1:00 and 2:00 P. M., same day, returning to Springfield on train No. 3, due to leave Chicago at 4:30 P. M. and arrive Springfield at 7:33 P. M. He did not work his trick on June 14th or June 15th."

An agreement bearing date of February 16, 1929, is in effect between the parties.

"Because of his assignment being from 3:00 P.M. to 11:00 P.M., he could not work on June 14th. Although he had ample rest in advance of time for going on duty on June 15th, he did not report for service on the 15th.

"Time lost by employees attending court is paid by voucher, and in computing compensation due Mr. Schrenk, he was, in error, allowed two days pay at his regular rate of 71 cents per hour, amounting to \$11.36, plus expenses of \$2.50, a total of \$13.86. Payment for time lost by telegraphers attending court is covered by Rule 13, first paragraph, of the Telegraphers' schedule, reading as follows:

"Telegraphers attending court at request of the railroad shall be allowed net compensation which would have been earned by them at their station, with necessary expenses when away from home."

"His attendance at court caused him to actually lose only his regular day on June 14th, therefore he should have been allowed only one day's pay instead of two. Instead of being underpaid he was, therefore, overpaid one day, amounting to \$5.68.

"In their claim, the Employees are attempting to compel payment under the overtime rule for the time Operator Schrenk was absent from Springfield in advance of his regular starting time on June 14th. Rule No. 3, of the Telegraphers' schedule, which is the overtime rule, reads as follows:

"Except as otherwise provided in these rules, time in excess of eight hours will be considered overtime and paid for on the actual minute basis at the rate of time and one-half.

"Employees notified or called to perform work after being released will be allowed a minimum of three hours for two hours work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis.

"Overtime will not apply to monthly rated positions."

"The Carrier contends that Rule No. 3 is not applicable with respect to payment for time lost by employees attending court, and that only Rule No. 13 governs. Attention is called to the fact that Rule No. 3 stipulates - 'Except as otherwise provided in these rules, etc., etc.' This provision specifically exempts the application of the overtime rule in such cases, as special provision is made in Rule 13 for the payment of time lost by telegraphers attending court. Rule No. 13 is clear and can only be construed to cover compensation that would have been earned by employees on their regular assignment if not required to attend court. Further, Rule No. 13 has always been so applied up to the present time.

"It is the position of the Carrier that the claim of the Employees is not supported by the provisions of the Schedule, nor past practice, and should be denied."

OPINION OF BOARD: The question presented here for determination is what compensation shall be paid employees who attend court at the request of the carrier. Stated in the abstract the General Committee contends that where an employee attends court away from home he is entitled to his full compensation for his regular trick, plus time and one-half for all remaining twenty-four hours of each day he is away from home. The carrier contends that the employee is entitled only to full compensation for his regular trick. Both parties agree that the employee is also entitled to reimbursement for his necessary expenses.

The pertinent provision of Rule 13 of the Telegraphers' Agreement is as follows:

"Telegraphers attending court at request of the Railroad shall be allowed net compensation which would have been earned by them at their station, with necessary expenses when away from home."

Rule 3 of the agreement provides:

"Except as otherwise provided in these rules, time in excess of eight hours will be considered overtime and paid for on the actual minute basis at the rate of time and one-half."

Carrier contends that Rule 13 only is applicable and the words, "Except as otherwise provided," in Rule 3 specifically make this rule not applicable. The General Committee contends that the, "Except as otherwise provided," contained in Rule 3, has reference only to the Sunday and Holiday rule, and that Rules 3 and 13 must be read together to ascertain the true compensation to which an employe is entitled when attending court away from home.

These rules have been a part of the prevailing agreement between the parties for many years. During all this period the rules have been construed as entitling the employe only to full compensation for his regular trick while attending court away from home. To now place any other construction upon the agreement would constitute in fact a modification and not an interpretation of the agreement.

Moreover, we do not believe the agreement is susceptible to the interpretation urged by the committee. The language used in Rule 13 that employes "shall be allowed net compensation which would have been earned by them at their station, with necessary expenses while away from home," is clear and unambiguous. The words "net compensation" were obviously deliberately used and can have no other meaning than that when attending court away from home employes shall be entitled to the compensation that would have been earned by them on their regular tricks at their stations. This is even more convincing when read in the light of the Hours of Service Law applicable to Telegraphers. Under this law they cannot work longer than nine hours in any twenty-four hour period. Therefore, their maximum compensation could not exceed more than one hour overtime in any twenty-four hour period, and in the light of this limitation upon their hours of work **net compensation** as used in Rule 13 can have reference only to the hours of their regular trick.

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 H. A. Schrenk is not entitled to payment for time as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1938.