

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that G. M. Merritt, regularly assigned telegrapher, Topeka Relay Office who reported for duty on his regular assignment of hours, 8:00 A. M. to 4:00 P. M., April 8, 1938 and after working approximately one hour was excused under Article 17 of the Telegraphers' Schedule, is entitled to and shall be allowed eight (8) hours pay for that day."

EMPLOYES' STATEMENT OF FACTS: "Agreement bearing date of February 5, 1924 and August 1, 1937, as to rules of working conditions and rates of pay respectively exists between parties to this dispute.

"G. M. Merritt was regularly assigned to a telegraph position, assigned 8:00 A. M. to 4:00 P. M., in the Topeka Relay office on April 8, 1938. After reporting for duty and working approximately one hour, he was released and paid pro rata rate for the time actually worked."

POSITION OF EMPLOYES: "The Scope Rule of The Telegraphers' Schedule reads:

'This schedule will govern the employment and compensation of:

Telegraphers,
Telephone Operators (except Switchboard Operators),
Agent-Telegraphers,
Agent-Telephoners,
Towermen,
Levermen,
Tower and Train Directors,
Block Operators,
Staffmen,

and such agents and other employees as may be shown in the appended wage scale.'

"Article 3, paragraph (d):

'Employees will not be required to suspend work during regular hours or to absorb overtime.'

"Article 17 reads:

'(a) Regularly assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied

'Paragraph (b) is the exception to the rule, it providing that * * * * where traffic is interrupted or suspended, paragraph (a) is not applicable.

'* * * * neither was there an interruption or suspension of traffic, * * * *.'

"In the organization brief, filed February 10, 1938, similarly drafted and with Grand Lodge approval, the employees say:

(Paragraph 2) 'Paragraph (b) of Article 17 is the exception to the rule * * * *.'

'It is acknowledged that traffic was not interrupted or suspended.'

(Paragraph 3) 'The exception (Paragraph (b)) was worded as it is for a purpose, that purpose being not to penalize the Carrier for conditions not within its control (and those conditions are named).'

(Paragraph 5) '* * * * the only time the Carrier can claim exception is when "traffic is interrupted or suspended by conditions not within the control of the company."'

"In their rebuttal brief, with similar preparation and official sanction, they say:

(Paragraph 2) '* * * * the exceptions are where traffic is interrupted or suspended * * * *.'

(Paragraph 3) '* * * * Article 17 names all of the exceptions thereto * * * *. All rules are in full force and effect unless and or until exceptions are contained therein and those exceptions are specifically worded with no chance for misinterpretation.'

(Paragraph 7) '* * * * when none of the exceptions as shown in the rule are in evidence.'

(Paragraph 9) '* * * * the rule in question is quite clear as to language and intent and can only mean that regularly assigned employees are guaranteed one days pay within each twenty-four (24) hours if ready for service, with the exceptions as noted in the rule and * * * * traffic was not interrupted or suspended * * * *.'

"From the foregoing it is very clear, first, that Article XVII (b) in its literal meaning, and as interpreted by this Board and by the employees themselves in connection with a case resulting in Award 708, requires payment only for time actually worked when employees covered by the schedule are released because there is no work to do, when such lack of work is occasioned by disruption of communication; secondly, that communication on the morning of the eighth was disrupted by violent weather conditions utterly beyond the power of the Carrier to control in the first instance, or to remedy during the period covered by this claim; that the employees' unilateral construction of the rule in 1923 was not agreed to by the Carrier, was simply advanced by the Telegraphers as their own construction at that time was never asserted by them to be the Carrier's construction, was admittedly advanced with the information that the Carrier might and probably would disagree on many of the details, and has subsequently been completely repudiated by the Telegraphers by their own submission in a case resulting in Award 708. In consequence of the foregoing, the claim asserted is completely without foundation, and we respectfully submit that it is the Board's duty under the facts and the law to dismiss it."

OPINION OF BOARD: A regularly assigned telegrapher in the Topeka Relay office reported for duty on April 8, 1938 and after working approximately one hour was released from service for the remainder of the day. He was paid pro rata rate for the time actually worked. The claim is for a full day's pay.

On the day in question there was a severe storm which resulted in a serious interruption of traffic. A number of telegraphers were notified not to and did not report for duty on that day. The employee involved in this claim was not so notified, did report and was used as indicated above.

Petitioner, relying on Article III (d) and Article XVII (a) of the prevailing agreement, contends that when an employee reports for duty, whether he works or not, he is entitled to a full day's pay. Article III (d) provides:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

Article XVII (a) reads:

"Regularly assigned employees will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and the designated holidays."

Carrier rests its refusal to pay the employee a full day's pay upon Article XVII (b), which provides:

"This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the Company."

Article III (d) is clearly not applicable to the facts in this case.

Article XVII (a) guarantees to regularly assigned employees a full day's pay within each twenty-four hours on all days they are supposed to work, except under conditions specified in Section (b) of said Article. Stated another way, Carrier suffers the loss if there is no work for an employee to do on his regularly assigned days, unless his failure to work is due to one of the causes specified in Section (b), in which case the employee is required to bear the loss.

The parties are in agreement that traffic was interrupted on April 8, 1938 as the result of a storm which is a condition not within control of the Carrier, and that this condition brought about the circumstances which gave rise to this claim.

Petitioner's contention that Paragraph (b) of Article XVII applies only in cases where Carrier notifies employees in advance of reporting for work that work will not be available because of traffic interruptions finds no support in the rule. The rule does not require the giving of advance notice. Moreover, to so interpret the rule, would in effect write out of Paragraph (a) the provision "if required on duty less than the required minimum number of hours." These words have some meaning which cannot be disregarded (see Award 109). They relieve the Carrier of liability in this case. Whether the rule is fair is a question which we cannot consider (see Awards 219 and 708).

Petitioner relies upon an interpretation placed on the rule by the committee representing employees when the agreement was executed. The interpretation was issued shortly thereafter. While conceivably this might be of value if there was ambiguity in the rule, it is of no binding force on the Board in this case. The rule is perfectly clear and unambiguous and the only authority of this Board is to apply the rule as the parties made it.

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 employee involved in this dispute are respectively carrier and employee 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 the carrier, in the action complained of, did not violate the agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of July, 1939.