

Award No. 1103
Docket No. TE-1070

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railway for overtime and calls due agent-telegrapher, Mr. J. M. Truby, Carrollton, Missouri, Moberly Division, under provisions of Rule No. 5 also for meal periods not afforded as provided for in Rule No. 4 of Telegraphers' Agreement. Between October 24, 1937, and February 7, 1938, he was required to meet Train No. 12 and to return to office to handle train orders outside his regularly assigned hours."

EMPLOYEES' STATEMENT OF FACTS: "Prior to October 24, 1937, the employes at Carrollton, Missouri covered by Telegraphers' Agreement were:

Agent-telegrapher with assigned hours 8:00 A. M. to 4:00 P. M.
7 days per week, monthly salary \$237.15.

Second Trick telegrapher with assigned hours 4:00 P. M. to 12:00
midnight, 7 days per week, hourly rate 71 cents.

Third trick telegrapher hours 12:00 Midnight to 8:00 A. M., 7
days per week, hourly rate 71 cents.

"Effective 12:00 midnight October 23, 1937, second trick telegrapher position claimed discontinued by carrier; effective 8:00 A. M. October 24, 1937, third trick telegrapher position claimed discontinued by carrier, leaving only the agent-telegrapher position with assigned hours 8:30 A. M. to 5:30 P. M. with one hour out for lunch, 7 days per week. The Agent-telegrapher was required to work outside his regularly assigned hours to meet train No. 12 which he continued to do until instructed to discontinue meeting this train on February 7, 1938."

CARRIER'S STATEMENT OF FACTS: "Effective Sunday, October 24, 1937, Mr. J. M. Truby, Agent-telegrapher at Carrollton, Missouri, rate \$237.15 per month, was assigned from 8:30 A. M. to 5:30 P. M., with one hour off for lunch and was afforded the allotted time off for lunch on each date from October 24, 1937, to February 6, 1938.

"During the period October 24, 1937, to February 6, 1938, the Agent-Telegrapher was required to remain on duty to meet Train No. 12, due at Carrollton at 5:45 P. M., and as a rule was relieved from duty about 5:45 P. M. or 5:50 P. M.

"The time reports submitted by Mr. Truby during the period October 24, 1937, to January 30, 1938, both inclusive, indicate that he performed service on each date as follows:

"The position of Exclusive Agent maintained at Paris, Missouri prior to April 8, 1930, was paid a monthly rate of \$195.00 per month, and was in accordance with the provisions of Rule 1, Paragraph (d) of the Telegraphers' Schedule, effective October 16, 1927, not subject to the provisions of Rules 3, 4, 5 and 7 of the Telegraphers' Schedule.

"When the situation arose which made it necessary to abolish the position of Exclusive Agent and the position of First Trick Telegrapher and establish a position of Agent-Telegrapher in lieu thereof at Huntsville, Missouri, Centralia, Missouri, Stanberry, Missouri and Carrollton, Missouri, the matter was discussed with the General Committee and it was agreed in conference on July 22, 1930, to apply the monthly rate formerly paid the Exclusive Agents, at the above mentioned points to the positions of Agent-Telegrapher, with the understanding that the monthly rate covered all service performed, and that the said positions would not be subject to the provisions of Rules 3, 4, 5 and 7 of the Telegraphers' Schedule.

"In other words, that the occupants of the positions in question would not be entitled to additional compensation for service performed in excess of eight (8) hours per day.

"The correspondence in connection with the discontinuance of the position of Exclusive Agent and the position of First Trick Telegrapher and the establishment of a position of Agent-Telegrapher in lieu thereof at Huntsville, Missouri, Centralia, Missouri, Stanberry, Missouri and Carrollton, Missouri has been reproduced and is submitted herewith (marked Carrier's Exhibit E).

"Correspondence submitted herewith as the Carrier's Exhibits A and E clearly shows that it was agreed by the parties on July 22, 1930 that the occupant of the position of agent-telegrapher at Carrollton, Missouri would not be entitled to compensation in addition to the monthly rate for service performed in excess of eight (8) hours per day and, therefore, it is obvious that the submission of this alleged claim to the Board is without question an attempt on the part of the Committee to set aside the agreement of July 22, 1930.

"In view of these facts the contention of the committee should be dismissed, and the claim denied."

OPINION OF BOARD: Both parties concede that in the absence of a special agreement the position of agent-telegrapher established at Carrollton in July 1930, upon abolition of the positions of exclusive agent and first-trick telegrapher, would have carried an hourly wage and would have been entitled, under the rules of the Agreement, to compensation for all overtime worked. The disposition of this proceeding, then, rests upon the meaning and intent of the special agreement with respect to the compensation of the agent-telegrapher entered into by the parties at their conference of July 22, 1930 and confirmed in writing the following day.

By this agreement the exclusive agent's rate of \$225.00 per month (subsequently increased to \$237.15) was continued; but it was agreed, further, that the agent was "to do the telegraphing on one trick in addition to his regular duties on the basis of the above monthly rate with no overtime," that the "monthly rate covers all services performed," and that "no overtime would be allowed for services in excess of eight hours per day."

It appears to have been the plain intention of the parties, in view of the continuance of the monthly rate, that overtime arising in connection with the performance of the duties of the agent-telegrapher's assignment be eliminated. In so far, therefore, as the present claim embraces overtime resulting from work during meal periods or from work subsequent to 5:30 P. M. on tasks which originated prior thereto, the right to compensation is precluded by the terms of the special agreement.

Since, however, the agent-telegrapher was employed for definitely assigned hours, and since, furthermore, at the time of the special agreement of July 22, 1930 a second-trick and third-trick telegrapher was employed (and continued to be so employed until October 24, 1937), naturally obviating any overtime other than that incident to the agent-telegrapher's definite assignment, it is unreasonable to assume or to hold that with the abolition of the second-trick and third-trick telegrapher positions, work incident to those positions was required by the special agreement to be performed by the agent-telegrapher without overtime compensation. In so far, therefore, as the present claim embraces overtime resulting from work previously performed by the other telegraphers, the right to compensation is not precluded by the terms of the special agreement.

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 employes involved in this dispute are respectively carrier and employes 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 overtime is due the claimant on the basis and to the extent indicated in Opinion Of Board.

AWARD

Claim as to overtime sustained on basis and to extent indicated in Opinion Of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 27th day of May, 1940.