

Award No. 1558
Docket No. TE-1338

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Agent-telegrapher A. O. Thomas, Grenada, Sacramento Division, be compensated for 5 hours, and 30 minutes daily at overtime rate, effective as of May 8, 1939, and continuing until such time as the hours of assignment for the position of agent-telegrapher at Grenada are fixed in accordance with Rule 12 (c) of the Agreement in effect."

EMPLOYEES' STATEMENT OF FACTS: "Prior to May 8th, 1939, the assigned hours of the Agent-telegrapher at Grenada were 8:00 A. M. to 5:00 P. M., daily except Sundays and Holidays.

"On March 14th, 1939, Superintendent Hack of the Sacramento Division wrote Local Chairman Wilson, the Organization Representative on the Sacramento Division:

Mr. I. S. Wilson, Local Chairman,
The Order of Railroad Telegraphers,
P. O. Box 2213,
Sacramento, California.

Dear Sir:

In order to more satisfactorily take care of the business that is offered us at Gazelle and Grenada Stations, would like to ask your approval to changing the hours of these two agents to bring them on duty at 12 Noon and work until 9:00 P. M., with one hour off for meals.

Will you please advise if this meets with the approval of your organization?

Yours truly,

W. L. Hack'

Without reaching an agreement as provided for in Rule 12, the Carrier did on May 8th establish assigned hours for the position of Agent-telegrapher at Grenada, 2:30 P. M. to 11:30 P. M."

POSITION OF EMPLOYEES: "EXHIBITS 'A' to 'K' inclusive are attached to and made a part of this submission.

considered DAY offices within the provisions of Agreement Rule 12 (h) and to which the provisions of Rule 12 (c), or second paragraph of the NOTE appended to Rule 12, do not apply.

"As the petitioner will likely continue to rely on the second paragraph of the NOTE under Rule 12 to support this claim, and while denying that the NOTE is in any way applicable, the carrier desires to state to the Board as evidence of its good faith in observing the terms of the Agreement, the fact that, during the time Grenada was still being maintained as a DAY office, the carrier endeavored to negotiate a starting time of 12 Noon for the position of Agent-telegrapher, as contemplated by the provisions of the NOTE to Rule 12, heretofore referred to, but the request of the carrier was declined by the representative of The Order of Railroad Telegraphers. He would not agree to any starting time later than 9:00 A. M. which the carrier, without negotiation, was and is privileged to assign its Agent-telegraphers at day offices. In other words, he was unwilling to meet an obligation imposed by the NOTE to Rule 12, which clearly and definitely provides that if the necessities of the service require starting telegraphers outside of the specified periods set forth in Section (c), the starting time **will be mutually agreed upon**. Then, after freely admitting that the carrier attempted under the agreement to negotiate a necessary and desirable starting time for the DAY position, to which the petitioner's representative would not agree, the petitioner is indeed in poor grace to say that it was 'arbitrary action by the Carrier' in thereafter assigning a starting time and assignment of hours for a position, by which the carrier might obtain some measure of work and service for the payment of a day's compensation, and which in no manner contravened any provision of the Telegraphers' Agreement. (Reference—General Chairman's letter June 28, 1939, quoted in Carrier's Statement of Facts.)

"The attention of the Board is invited to the fact that Grenada is a small, relatively unimportant station, serving a very small community. There is no need for a full-time 8-hour position of Agent-telegrapher but by the assignment of hours between 2:30 P. M. and 11:30 P. M., it provided the Carrier with an opportunity to obtain a greater measure of service from the position by having the Agent-telegrapher on duty when the only westward passenger train passed Grenada at 9:34 P. M. (8:49 P. M. since June 17, 1940), for which there was the greatest need, and the only two local freight trains due at 6:10 P. M. and 10:31 P. M. He is also on duty and available in case train orders are to be issued and delivered to any of the three trains. The 'day' position assignment—9:00 A. M. to 6:00 P. M.—the only assignment to which the Petitioner's representative would agree to, and which is permitted by the Agreement, covered a consecutive 8-hour period of time, excluding meal hour, during which **none** of the carrier's passenger or freight trains, as shown in Carrier's Statement of Facts, were due at the station.

CONCLUSION: "Inasmuch as we have clearly and conclusively shown that no rule of the Telegraphers' Agreement has been in any manner violated, but to the contrary, the carrier having strictly adhered to the provisions of the agreement in the assignment of hours to the position of Agent-telegrapher at Grenada, the carrier requests that the claim of the petitioner be denied.

"For the Board to do otherwise than deny this claim, would be in utter disregard of the principle enunciated in its Award 109 of October 15, 1935, wherein it was stated:

'It is not within the province of this Board to add or take away language from an agreement made between the parties. In this case it would be necessary to alter the existing agreement between the parties in order to support the contention of the Petitioner.'

OPINION OF BOARD: The assigned hours of the agent-telegrapher at Grenada, a one man station, were from 8:00 A. M. to 5:00 P. M., daily except Sundays and holidays.

On March 14, 1939 the Carrier sought the Organization's approval of a change so that the agent would work from noon to 9:00 P. M. The Organization did not approve and on May 8th the Carrier established the agent's assigned hours of duty from 2:30 P. M. to 11:30 P. M.

The Carrier claims that the situation at this station required a change in the agent's starting hour from 8:00 A. M. to 2:30 P. M. With this we might possibly agree but the agreement between the parties restricts such determination to the parties. It provides in the note to Rule 12 that if the necessities of the service require starting a telegrapher at a one man station at any other time than between 6:00 A. M. and 9:00 A. M., (see paragraph (c) of this rule,) "the starting time will be mutually agreed upon between representatives of the carrier and the employees." The Carrier by the language of the agreement has deprived itself of the unilateral right, which it subsequently exercised in the instant case, to fix the starting time, and this Board is precluded from any determination of necessity.

The Carrier argues that Grenada is a night station because none of its passenger or freight trains are due between the hours of 9:00 A. M. and 6:00 P. M. and therefore the restriction of paragraph (c) of Rule 12 does not apply. The pertinent language of this paragraph reads:

"(c) At stations where but one (1) telegrapher is employed, if a day office, the hours of service shall begin between six (6) A. M. and nine (9) A. M."

We do not need to determine the dispute between the parties as to whether Grenada is a day office or a night office because it cannot be disputed that its agent has a "one man assignment." The parties have agreed that "in no case will one man assignments begin earlier than five (5) A. M. no later than twelve (12) noon." See the concluding language of the "note" appended to Rule 12.

By requiring the agent at Grenada to begin his "one man assignment" at 2:30 P. M. without mutual agreement between the parties the Carrier has violated the agreement and the petitioner is entitled to the compensation claimed for overtime. See Awards 25 and 705.

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 the Carrier has violated Rule 12 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1941.

Dissent to Award 1558 (Docket TE-1338)

We perforce dissent from this opinion which does not comprehend the clear purpose and intent of Rule 12—Starting Time of the Agreement, especially paragraph (h) thereof, in arriving at the construction here placed on the Note appended to the Rule, which note by its terms applies only to the situation covered by paragraph (c). Such construction is not in keeping with paragraphs (c) and (h) as well as the Note and thus imposes conditions of impractical consideration not contemplated by either of the parties to the Agreement.

/S/ R. F. Ray
/S/ C. P. Dugan
/S/ A. H. Jones
/S/ C. C. Cook
/S/ R. H. Allison