

Award No. 1559
Docket No. TE-1339

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 W. C. Longmire, Gazelle, Sacramento Division, be compensated for 5 hours and 30 minutes daily at overtime rate, effective as of May 8th, 1939, and continuing until such time as the hours of assignment for the position of agent-telegrapher at Gazelle are fixed in accordance with Rule 12 (c) of the Agreement in effect."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 8th, 1939, the assigned hours of the Agent-telegrapher at Gazelle were 8:00 A. M. to 5:00 P. M., daily except Sundays and Holidays. Also an assigned call, 9:15 P. M. to 11:15 P. M. daily except Sunday for the purpose of meeting train No. 7 due Gazelle 9:49 P. M."

"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 12:00 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 Gazelle, 2:30 P. M. to 11:30 P. M."

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

ment in the assignment of hours to the position of Agent-telegrapher at Gazelle, the Carrier requests that the claim of the Petitioner be denied.

"For the Board to do otherwise than deny the 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: This is a companion case to TE-1338 and was argued concurrently therewith.

The assigned hours of the agent-telegrapher at Gazelle, 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 same arguments are presented as were considered in TE-1338 and we arrive at the same conclusion viz: that by requiring the agent at Gazelle 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 Award 1558 decided herewith.

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 1559 (Docket TE-1339)

We dissent from this Award for the reasons expressed in our dissent to Award No. 1558 (Docket TE-1338), rendered concurrently.

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