

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 T. W. Simpson, Agent-telegrapher at Macdoel, Sacramento Division, be compensated for 5 hours and 15 minutes daily at the overtime rate under Rules 12 and 14 of the Telegraphers' Agreement effective July 31, 1939, and continuing until such time as the hours on this position are assigned in accordance with the Telegraphers' Agreement on this property."

EMPLOYES' STATEMENT OF FACTS: "Prior to July 31st, 1939, the assigned hours of the Agent-telegrapher at Macdoel were 7:00 A. M. to 4:00 P. M., daily except Sundays and Holidays. On July 29th, 1939, the Agent-telegrapher at Macdoel received the following wire from his supervising official—

"Effective Monday, July 31st, assigned hours for agent-telegrapher Macdoel will be 2:15 P. M. to 11:15 P. M. daily except Sundays and holidays with one hour off for meal. Arrange to post notice your station accordingly for information of public.

D-788'

"On July 28th, 1939, Trainmaster in that district was at Macdoel for the purpose of ascertaining if some outside party could be secured to handle mail and express, etc., outside the assigned hours of the Agent-telegrapher. He was also looking for an outside party to handle mail and express between Macdoel and Mt. Hebron in order to eliminate a stop for Nos. 19 and 16 at Mt. Hebron.

"The hours of assignment were changed in line with the above quoted telegram by the Carrier without conference and agreement with the representatives of the Employees.

"Conference held December 7th, 1939, Carrier representative refused to rescind its action in this case."

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

"There is in effect an agreement between the parties to this dispute dated May 1st, 1927 as to rates of pay, amended as of July 1st, 1930 and August 1st, 1937 and dated September 1st, 1927 as relates to rules.

"As heretofore stated, the position of Agent-telegrapher at Macdoel is not a DAY position.

"Attached hereto and made a part of this submission is CARRIER'S EXHIBIT 'A,' which contains a list of stations on the lines of this carrier where only one telegrapher is employed as of July 1, 1940, which are not 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.

"The attention of the Board is invited to the fact that Macdoel is a small relatively unimportant station on a single track main line, serving a sparsely populated farming and dairy district. The primary use for this office is for train operating purposes, i. e., the reporting of trains to the train dispatcher and the copying and delivery to trains of train orders when necessary. There is no practical need for a full-time 8-hour position of an Agent-telegrapher as far as the convenience and necessity of the public is concerned. The assignment of hours between 2:15 P. M. and 11:15 P. M. to the position not only made it possible for the carrier to better serve the public and obtain some measure of service from the incumbent of position by having him on duty at a time that the only two passenger trains, one in each direction, which served the station and were scheduled to stop at 7:42 P. M. and 8:37 P. M. respectively (since June 17, 1940, 7:37 P. M. and 8:52 P. M.), but also provided the services of a telegrapher for the purpose of reporting the passing of the more important freight trains to the train dispatcher, and, when occasion required, to copy and deliver train orders to such trains, during an 8-hour period out of the 24, that best served the operating requirements of the carrier.

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 Macdoel, 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 1339 and was argued concurrently therewith.

The assigned hours of the agent-telegrapher at Macdoel, a one man station, were from 7:00 A. M. to 4:00 P. M., daily except Sundays and holidays.

Without conference or agreement between the parties, the agent was notified on July 29, 1939 that effective July 31st his assigned hours would be from 2:15 P. M. to 11:15 P. M.

The same arguments are presented as were considered in TE-1339 and 1340 and we arrive at the same conclusion, viz: that by requiring the agent at Macdoel to begin his "one man assignment" at 2:15 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 1558 and 1559 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 1560 (Docket TE-1340)

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