

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, 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 Telegrapher W. L. Bass be compensated for six hours daily at overtime rate under Rule 14 of the effective agreement account service performed as agent-telegrapher at Westley, California, July 14, 1939 to August 29, 1939, assigned hours 3:00 P. M. to 7:00 P. M. and 8:00 P. M. to 12:00 Midnight in violation of Rule 12 (c) of the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Telegrapher Bass, Western Division, occupied the position of Agent-telegrapher at Westley, Calif., Western Division, July 14th to August 29th, 1939. His assigned starting time, 3:00 P. M., was fixed by the Carrier without conference and agreement with the Organization representative.

POSITION OF EMPLOYEES: An agreement exists between the parties to this dispute and the agreement is on file with this Board.

EXHIBITS "A" to "G" are made a part of this submission.

The claim is prosecuted under Rule 12 (c) of the agreement and the second paragraph of the Note to Rule 12, both now being quoted—

"RULE 12.

"Starting Time

"(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. At stations where two (2) telegraphers are employed the hours of service for agent or first trick telegraphers shall begin between six (6) A. M. and nine (9) A. M."

"NOTE: It is understood that at stations where but one (1) telegrapher is employed, if the necessities of the service require starting telegrapher outside of specified period set forth in Section (c), the starting time will be mutually agreed upon between representatives of the carrier and the employees, but in no case will one-man assignments begin earlier than five (5) A. M., nor later than twelve (12) noon."

Conference was held with the Carrier on this dispute, January 28th, 1942.

Exhibits made a part of the submission reflect the handling of the dispute and discloses that the position of the Committee is in accord with the position

establishing in the instant case a proper interpretation of Rule 12 of the current agreement and denying the alleged claim in the instant case.

CONCLUSION

The carrier submits that the Board should dismiss the alleged claim in the instant case for want of jurisdiction, but in the event that it does not, then the carrier submits that the Board should deny it.

OPINION OF BOARD: The issue in this case is substantially the same as in Docket TE-2088, Award 2126, except that in this case no claim appears to have been presented to the Carrier until after the filing of Award 1558. Award 2126 is controlling here and the decision with respect to this claim must be the same as in that case.

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 employees involved in this dispute are respectively carrier and employees 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 Rule 12 (c) as qualified by the note and as interpreted in Awards 1558, 1559, 1560 and 1561 is applicable to the practice here involved, but that the evidence of record does not justify an award of reparation.

AWARD

Claim as to applicability of Rule 12 (c) sustained, and claim for reparation denied, both in conformity with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.

DISSENT
TO
AWARD 2126, DOCKET TE-2088
AWARD 2127, DOCKET TE-2096
AWARD 2128, DOCKET TE-2106
AWARD 2129, DOCKET TE-2109

This Opinion correctly interprets the real and common sense intent of Rule 12, including the Note.

In view of the interpretation here announced, which is contrary to the interpretation of the rule as made in Awards 1558 to 1561, it is our opinion that the correct interpretation and true meaning of the rule should prevail.

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