

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BERRYMAN HENWOOD, TRUSTEE
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
DEBTOR

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Company, that L. T. James, regularly assigned agent-telegrapher at Kingsland, Arkansas, who was required to work in the place of other employes on other shifts at McNeil, Arkansas, on May 30 and 31, and on June 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, 1942, shall be paid for this work at the rate of time and one-half the straight time rate of the positions worked, or that of his regularly assigned position, whichever is the greater, in accordance with the "Change in Shift" rule mutually adopted September 4, 1940, by the parties to the telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, as to rules and working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

Effective September 4, 1940, a "Change in Shift" rule was mutually adopted by the parties to said agreement, providing that an employe required to work in the place of another employe on another shift, shall be paid the rate of time and one-half the position worked, or that of his assignment, whichever is the greater.

L. T. James, regularly assigned agent-telegrapher at Kingsland, Arkansas, under the telegraphers' agreement, was required by the carrier to work in the place of other employes on other shifts at McNeil, Arkansas, on May 30 and 31, and on June 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, 1942.

For working in the place of other employes on other shifts at McNeil, agent-telegrapher James was paid at the straight time rate of the positions worked.

POSITION OF EMPLOYES: In resolving disputes which had arisen as to the appropriate method by which to compensate employes under the telegraphers' agreement when required by proper authority to work in the place of another employe on another shift, the following "Change in Shift" rule to govern in such cases was mutually adopted, effective September 4, 1940, between the General Superintendent of the St. Louis Southwestern Railway Company and the General Chairman of The Order of Railroad Telegraphers, parties to the telegraphers' agreement:

This shows that the Employes formerly placed the same interpretation on Article 16 which the Carrier still maintains, that is, the assigned telegrapher used on another position in emergency must be paid not less than his regular compensation, plus expenses while away from his home station. Therefore, their claim in the present case is in effect request for a change in the agreement by interpretation.

Telegrapher James was used in an emergency, as contemplated by Article 16 of the Telegraphers' agreement. The settlement of September 4, 1940, referred to by the Employes in their Statement of Claim as an obligation that he be paid time and one-half rate, covered an entirely different matter not similar to the present case and has no bearing upon the present case. The Carrier, therefore, respectfully requests that the Employes' claim be denied.

OPINION OF BOARD: In this case extra telegrapher McHaney was used to relieve James at Kingsland when James was taken from his regular assignment to relieve the regular telegrapher at McNeil. McHaney was clearly qualified and could have been used for the relief work at McNeil so that James need not have been taken from his regular assignment. There being a qualified extra telegrapher available who could and should have been used for the relief work under Article 14 in lieu of James, this claim is indistinguishable from Awards 2442, Docket No. TE-2300, and must be allowed.

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 the Carrier violated the agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of January, 1944.