

Award No. 2668
Docket No. TE-2658

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Wabash Railroad Company, that the Carrier violated and continues to violate Rule 5 of the Telegraphers' agreement commencing September 4, 1942, by assigning the ticket agent-telegrapher at Danville, Illinois, a two-shift telegraph office, to work eight consecutive hours exclusive of the meal period, or eight hours within a spread of nine hours, on each day without pay for the ninth hour at the overtime rate; and that the ticket agent-telegrapher at this station shall be compensated at the overtime rate for the one hour worked in excess of eight consecutive hours with no allowance for meals on each day retroactive to September 4, 1942.

EMPLOYES' STATEMENT OF FACTS: An agreement last revised and bearing date October 16, 1927, as to rules of working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

Prior to October, 1931, the following positions were maintained by the Carrier under the telegraphers' agreement at Danville, Illinois:

Exclusive (non-telegraph) ticket agent, rate \$177.50 per month.
1st telegrapher-clerk, hours 7:00 A.M. to 3:00 P.M., rate 67¢ per hour.
2nd telegrapher-clerk, hours 3:00 P.M. to 11:00 P.M., rate 67¢ per hour.
3rd telegrapher-clerk, hours 11:00 P.M. to 7:00 A.M., rate 67¢ per hour.

During the month of October, 1931, the following changes in these positions were made:

The exclusive (non-telegraph) ticket agent, 1st telegrapher-clerk, and 2nd telegrapher-clerk positions were abolished, and a new position of ticket agent-telegrapher created with hours 11:00 A.M. to 8:00 P.M., including one hour for meals. The 3rd telegrapher-clerk position remained in effect, but the assigned hours were changed to run 8:00 P.M. to 5:00 A.M., with one hour allowed for meals.

Effective September 4, 1942, the assigned hours of the ticket agent-telegrapher position were changed to run 8:00 A.M. to 5:00 P.M., with one hour allowed for meals.

Time slips were filed by the ticket agent-telegrapher for one hour overtime on each day, September 4 to 14, 1942, both dates inclusive, account required to work one hour in excess of eight consecutive hours in a two-shift telegraph office. Payment of these time slips were declined by the Carrier.

"RULE 7

SUNDAY AND HOLIDAY WORK

(a) Employees will be excused from Sunday and holiday duties as much as the condition of business will permit.

(b) Time worked on Sundays and the following holidays—namely New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (providing when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday) shall be paid for at the regular hourly rate when the entire number of hours constituting the regular week-day assignment are worked.

(c) When notified or called to work on Sundays and the above specified holidays a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employees will be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with overtime and call rules."

When consideration is given to the fact that the incumbent of the position of ticket agent at Danville was not required to work in excess of eight (8) hours per day during the period in question, and the further fact that the position of ticket agent at that point is not subject to the provisions of Rules 3, 4, 5 and 7, quoted above, it is obvious that the alleged claim set up in the Committee's Ex Parte Statement of Claim, is without basis under the rules of the Telegraphers' Schedule and that the submission of this alleged dispute to the Board is without question an attempt on the part of the Committee to change the rules of that agreement in a manner contrary to the provisions of Rule 24 thereof and Section 6 of the Railway Labor Act, as amended, therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: This claim is for one hour's overtime for each day worked from September 4, 1942 to May 1, 1943, during which the claimant was assigned on a nine hour spread as ticket agent-telegrapher at a two-shift office.

The proper disposition of the case turns upon whether the claimant was an agent-telegrapher under Rule 1 (a) of the Agreement or the holder of a monthly position enumerated in Rule 26. If he was under Rule 1 (a) he is entitled to the benefit of Rule 3 (a) which provides that where two or more shifts are worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work. If he was within Rule 26 he is bound by Rule 1 (d) which provides that positions shown in said Rule shall not be subject to Rule 3.

The general scope of the Agreement is to be found in Rule 1 (a), in which agent-telegraphers are specifically mentioned. Rule 1 (d) is in the nature of an exception or limitation. Agent-telegraphers are not referred to, as such, in Rule 26—the position in controversy being designated as "Ticket Agent," under the heading of "Exclusive Agencies." Telegrapher positions are listed under another classification. We are of the opinion, therefore, that when the carrier assigned telegrapher duties to the exclusive ticket agent at Danville it thereby took him out of the classification enumerated in Rule 26, insofar as the application of Rule 1 (d) is concerned, and constituted him an agent-telegrapher within the broad scope of Rule 1 (a). The fact that the petitioner's local chairman consented to the assignment is of no significance. Award 1877. There is nothing in the Agreement that restricts overtime to employees who are paid on an hourly basis.

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 amended 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.