

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 the Wabash Railroad, that the carrier violated the terms of the telegraphers' agreement when, in 1932, it required the monthly rated exclusive ticket agent at Fort Wayne, Indiana, occupying a position covered by said agreement, to work in excess of eight hours daily without overtime pay to perform work previously done by other employes; and that the ticket agent shall be paid at the overtime rate for all time worked in this manner in excess of eight hours on each day commencing November 11, 1942, the date for which overtime claim was filed, to April 16, 1943, the last day required to perform this additional service.

EMPLOYES' STATEMENT OF FACTS: An agreement 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.

The position of exclusive ticket agent at Fort Wayne, Indiana, is covered by said agreement and is rated on a monthly basis in Rule No. 26—Wage Scale—of the agreement.

Prior to January 1, 1925, the position was on the hourly basis, and the incumbent required to work only eight hours daily.

Effective January 1, 1925, by mutual agreement between the parties to the telegraphers' agreement the position was changed to the monthly basis with the agreed understanding that this change was not done with the intention to lengthening the hours of service of the position or assigning to it work previously performed by other employes and requiring the incumbent to work overtime to do such work.

Commencing in 1932, as a result of the discontinuance of a ticket clerk position in the Fort Wayne ticket office the exclusive ticket agent was required to work in excess of eight hours daily without overtime pay to perform the work previously performed by the employe whose position has been discontinued; and during November, 1934, owing to a change in the scheduled departure of trains, the hours of service of the exclusive ticket agency were further lengthened without monetary consideration.

On November 1 and 2, 1942, the ticket agent filed claims for pay for overtime thus worked in excess of eight hours on these days. The claims were declined. On January 11, 1943, the General Chairman in behalf of the ticket agent filed claims for overtime worked in excess of eight hours on each day from November 11, 1942, under provisions of Rule 5 (e) reading:

"No adjustments for overtime or extra service will be allowed or deductions on this account made, unless attention has been called to the error within sixty days from the time services were performed."

(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 position of ticket agent at Fort Wayne 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: In contrast with Docket TE-2658, Award 2668, the parties are in agreement that the position here involved is covered by the exceptions contained in Rule 1 (d). The petitioner relies, however, upon an alleged special agreement contained in letters dated December 13, 1922 and February 15, 1924, and set out in its submission.

The current Agreement covering working conditions bears effective date of October 16, 1927, and the assignment in question was not made until 1932. Under these circumstances, we must assume that the assignment was made pursuant to the subsequent general Agreement, rather than under the antecedent special agreement. In this respect this claim is distinguishable from that determined by Award 1103, where the special agreement unsuccessfully relied upon was subsequent to the general. Under the proper application of the general Agreement the claimant is not entitled to prevail.

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 the carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. JOHNSON
Secretary

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