

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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 Roy Veech, agent-telegrapher, Bement, Illinois, be paid the difference between what he was paid based on time and one-half rate of the second trick telegraph position at Bement and what he would have been paid based on time and one-half rate of his regularly assigned position for four hours overtime worked in doubling on the second trick telegraph position from 3:00 P. M. to 7:00 P. M. on each of the following dates:

April 26, 27, 28, 29 and 30, 1944.

May 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 1944.

June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 30, 1944.

July 1, 2, 3, 4, 5, 6, 7, and 8, 1944.

JOINT STATEMENT OF FACTS: The following positions covered by the Telegraphers' schedule, effective October 16, 1927, are maintained at Bement, Illinois:

Position	Hours of Assignment	Rate of Pay
Agent-Telegrapher	7:00 A.M. to 3:00 P.M.	\$273.32 Per Month
Second Trick Telegrapher	3:00 P.M. to 11:00 P.M.	.94 Per Hour
Third Trick Telegrapher	11:00 P.M. to 7:00 A.M.	.94 Per Hour

Mr. Roy Veech is regularly assigned on position of Agent-Telegrapher at Bement, and is assigned to work from 7:00 A. M. to 3:00 P. M. daily.

On account of the incumbent of the position of the second trick Telegrapher at Bement being out of service on account of illness, Mr. Roy Veech, regularly assigned on the position of Agent-Telegrapher at that point, was required to fill the position of second trick Telegrapher from 3:00 P. M. to 7:00 P. M., and Mr. J. G. Hannah, regularly assigned on position of third trick Telegrapher at Bement, was required to fill the position of second trick Telegrapher at that point from 7:00 P. M. to 11:00 P. M. on each of the following dates:

April 26, 27, 28, 29 and 30, 1944.

May 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 1944.

June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 30, 1944.

July 1, 2, 3, 4, 5, 6, 7, and 8, 1944.

Mr. Veech worked on his regular assignment from 7:00 A. M. to 3:00 P. M. on each of the dates mentioned above.

For the services performed on position of second trick Telegrapher from 3:00 P. M. to 7:00 P. M. on the dates mentioned above, Mr. Veech was paid on the basis of time and one-half of the rate of the position of second trick Telegrapher, i. e., 94¢ per hour or \$1.31 per hour.

POSITION OF EMPLOYEES: There is an agreement bearing date of October 16, 1927 in effect between the parties to this dispute which reads in part, as follows:

"Rule 3 (a) Eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work, except where two or more shifts are worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work."

"Rule 5 (a) Time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

(b) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours overtime without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes. Employees notified or called to perform work not continuous with the regular work period, or continuous with, but in advance of the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

(c) Employees required to double will be paid for excess time as overtime, as per paragraph (a) of this article.

(d) Employees will not be required to suspend work during regular working hours, or to absorb overtime."

"Rule 9 (c) When a regularly assigned employee is temporarily assigned to a position paying a lower rate than his regular position, he will be paid at his regular wages. If transferred to a position paying a higher rate, he shall receive such higher rate of pay and be allowed in addition his expenses when filling such temporary assignment, not to exceed Two (2) Dollars per day, if called away from his regular assigned position."

The incumbent of the position of the second trick telegrapher at Bement being out of service on account of illness, Mr. Roy Veech, regularly assigned Agent-Telegrapher and Mr. J. G. Hannah, regular assigned third trick Telegrapher were required to "double" and thereby work four (4) hours overtime on each of the dates set fourth in this claim. For this overtime the carrier paid Mr. Veech on the basis of time and one-half rate of the position of second trick Telegrapher.

Mr. Veech having worked his regular tour of duty of eight (8) hours, 7:00 A. M. to 3:00 P. M. as Agent-Telegrapher on each of the dates in question, was required to continue on duty an additional four (4) hours on each of these dates, doubling over, 3:00 P. M. to 7:00 P. M. at which time he was relieved by Mr. Hannah, the regularly assigned third trick Telegrapher, who also doubled four (4) hours, 7:00 P. M. to 11:00 P. M., after which he continued on duty to work his regularly assignment of eight hours, 11:00 P. M. to 7:00 A. M.

"Rule 5 (a) Time worked in excess of eight (8) hours, exclusive of meal periods, on any day, will be considered overtime and paid on the actual minute basis at time and one-half."

"(c) Employees required to double will be paid for excess time as overtime, as per paragraph (a) of this article."

It is the contention of the carrier that as Mr. Veech's overtime service was within the assigned hours of that of the second trick Telegrapher, 3:00 P. M. to 7:00 P. M., he is only entitled to overtime pay based on the rate of the second trick Telegrapher's position, which is a lower rate than time and one-half of his regular assigned position.

Overtime is determined by two factors:

First: By time worked in excess of eight (8) hours, exclusive of meal period, on any day.

Second: By being called to perform work not continuous with the regular work period, or continuous with, but in advance of the regular work period.

When Mr. Veech was required to work from 3:00 P. M. to 7:00 P. M. on the dates referred to in this claim, this time was determined as overtime due to the fact that he was required to work eight (8) hours on his regular assigned position on these dates and the time worked from 3:00 P. M. to 7:00 P. M. was in excess of eight (8) hours worked as agent-telegrapher. Therefore, Mr. Veech is entitled to payment at the agent-telegrapher's overtime rate because his regularly assigned position was that of agent-telegrapher and it was that position, with its assigned hours and rate of pay, from which Agent-Telegrapher Veech was projected into overtime service.

POSITION OF CARRIER: The claim set up in the Committee's Ex Parte Statement of Claim in favor of Mr. Roy Veech for the difference between what he was paid at time and one-half at the rate of the position of second trick telegrapher and what he would have been paid had he been paid time and one-half at the hourly rate of the position of agent-telegrapher for the service performed in filling the position of second trick telegrapher at Bement from 3:00 P. M. to 7:00 P. M. on the dates mentioned in the Joint Statement of Facts is without foundation under the rules of the Telegraphers' Schedule effective October 16, 1927.

Rule 5 of that agreement reads as follows:

"RULE 5 OVERTIME AND CALLS

(a) Time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

(b) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours overtime without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

Employees notified or called to perform work not continuous with the regular work period, or continuous with, but in advance of the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

(c) Employees required to double will be paid for excess time as overtime, as per paragraph (a) of this article.

(d) Employees will not be required to suspend work during regular working hours, or to absorb overtime.

(e) 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.

(f) Employees will be notified when overtime or claims for extra service are not allowed and a reason given therefor."

As shown by the Joint Statement of Facts, Mr. Veech worked on his regular assignment as agent-telegrapher from 7:00 A. M. to 3:00 P. M. on each of the dates in question.

As also shown by the Joint Statement of Facts, Mr. Veech was not required to and did not in fact work in excess of eight (8) hours on his regular assignment on any date mentioned in the Joint Statement of Facts.

Mr. Veech was not temporarily assigned on the position of second trick telegrapher at Bement on the dates mentioned above, but was used to fill the vacancy on that position for a period of four (4) hours on each date after the completion of his tour of duty on his regular assignment on account of no extra telegraphers being available. Under these circumstances, Rule 9, paragraph (c), of the Telegraphers' Schedule is not applicable and has no bearing whatever.

The claim of Mr. Roy Veech for time and one-half at the rate paid the position of agent-telegrapher at Bement for the service performed in filling the position of second trick telegrapher for a period of four (4) hours on the dates in question involves a request to change the established rate of that position in a manner contrary to the provisions of Section 6 of the Railway Labor Act as amended and Rule 24 of the Telegraphers' Schedule.

Mr. Veech was properly compensated under the rules of the Telegraphers' Schedule for the service performed in filling the position of second trick telegrapher at Bement from 3:00 P. M. to 7:00 P. M. on the dates shown in the Joint Statement of Facts. Therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: The Agreement, Rules 5-(a) and 9-(c) in particular, considered in relation to the circumstance of this case requires compensation to the claimant at one and one-half times the rate of pay of his regularly assigned position.

FINDINGS: The Third Division of the Adjustment Board, 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;

That the parties waived hearing on this dispute; and

That claim will be sustained as indicated in Opinion.

AWARD

Claim sustained as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1945.