Award No. 2829
Docket No. TE-2669

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad Company that the Carrier, pursuant to the provisions and terms of the telegraphers' agreement, shall pay incumbents of the Kingston, Pennsylvania, ticket agency, retroactively and hereafter, for all time required by the management to work on Sundays and holidays in addition to the monthly rate, in accordance with the provisions of the telegraphers' agreement, Rule 5 and Rule 8.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At page 23 of the telegraphers' agreement is listed "Kingston: Ticket Agent, rate of pay $181.60 per month." Generally, if not all the while, this position has assigned week-day hours 1:00 P. M. to 10:00 P. M., with one hour out for meal (a one-shift office), and a "call" of one hour beginning at 5:30 P. M. on Sundays and holidays. For this "call" service required and performed on Sundays and holidays, the Carrier allowed no compensation over and above the monthly rate until the organization made claim for compensation in accordance with the provisions of Rule 8, following which an allowance of nine cents (9¢) an hour was made from September 1, 1941 to December 1, 1941, and ten cents (10¢) an hour thereafter.

The rate of the position, $181.60, as shown in the May 1, 1940, agreement, was increased $20.40, or to $202.00, effective December 1, 1941, pursuant to the provisions of the National Wage Agreement dated December 15, 1941, and in accordance with Section 1-(d) thereof, based on a comprehended work-month of 204 hours.

POSITION OF EMPLOYES: The question at issue is simple of understanding and can be stated briefly. **Can the Carrier require Sunday and holiday service from the ticket agent at Kingston at the rate of 10¢ per hour, contrary to the provisions of Rule 8 of the telegraphers' agreement?**

It should be noted that this dispute is companion to one presented to the Third Division which concerns proper payment to the agents at Owego and Mt. Morris for services required and performed on Sundays and holidays.

As indicated in the Employes' Statement of Facts, the Kingston ticket agency is listed in the telegraphers' agreement dated May 1, 1940, at page 23,

The Organization has made claim that Rules 5 and 8 of the Agreement apply. These rules read:

Rule 5—Call Rule—

"Employes notified or called to perform work and not continuous with 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."

Rule 8—Sunday and Holiday Work—

"(a) Employes 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 and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or 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, employes shall 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."

The Carrier contends that neither rule applies as the one hour on Sunday is part of the regular assignment on which the original monthly rate of pay was based, and that to apply the Mediation Agreement on the basis of a "Call" or three hours would be contrary to the intent of the Agreement and result in an increase in the rate of pay for this position beyond that granted to other positions not so situated.

It is of the utmost significance that the employe at Kingston makes no claim and has always been satisfied—see affidavit.

The claim has no merit and should be denied.

OPINION OF BOARD: From such pertinent facts as we have been able to glean from a none too satisfactory record, we have reached the conclusion that on May 1, 1940, the effective date of the current Agreement, and for sometime prior thereto the position of Ticket Agent at Carrier's Kingston Ticket Office was a six-day week position of eight (8) hours per day, coupled with the additional requirement that the incumbent thereof work an extra hour on Sundays and holidays in order to care for the very limited amount of business transacted in the Carrier's office on those occasions.

The parties have not been any too helpful in producing competent evidence to enlighten us on the question with the result we have been unable to ascertain just when, if not always, the operation was so regarded, or what the true situation with respect to it was prior to the date just above mentioned.

Be that as it may, the parties when they executed the current Agreement knew of the condition at Kingston and failed to except the position from the application of its terms. True, as suggested by the Carrier, there is attached to the Agreement a schedule listing rates of pay, some positions at an hourly rate and others at a monthly one, the Kingston position appearing in the latter class. However, we do not regard the manner in which the Kingston station is listed in the Schedule as decisive in determining the true nature of the assignment. It merely evidences that at that time, for convenience or some other

purpose best known to the parties, it was determined employes should be paid on the basis of rates shown in the Schedule without regard to the nature of their assigned operations. At any rate such Schedule cannot be regarded as having the effect of excepting the position. Even the Carrier did not so regard it in 1942, when in making an adjustment of wages under a wage agreement to which it was a party, it made adjustments on this very position as if it was a six-day week assignment.

Rule 8 (c) reads

"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, employes shall 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."

We find no other provision of the current Contract providing for payment of compensation under the confronting facts.

Since we have determined the Kingston position was a six-day week assignment on the date the rule just quoted became effective and since, as we now hold, such position was subject to the application of its terms, it follows the incumbent of that position should have been paid by the Carrier for Sunday and holiday work as provided for therein.

We do not, however, under all the facts and circumstances of this case, believe the Carrier, even though its action was in disregard of the rule, should be penalized beyond the date on which the violation was first called to its attention by the Petitioner. That was not until November 18, 1942. Therefore, the claim as filed is sustained except that retroactive payment for Sunday and holiday work is allowed from November 18, 1942, not December 1, 1941, as claimed by Petitioner.

The Carrier's contention this case is not properly before the Board merits little consideration and will not be discussed at length. Where a claim is handled by the properly designated representative of the employe with the Chief Operating Officer of the Carrier who rejects it there is sufficient compliance with Section 3 (i) of the Railway Labor Act to permit this Division to take jurisdiction and pass upon its merits.

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 Company violated the current Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1945.