

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(James M. Douglas, Referee)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Lehigh Valley Railroad that J. A. O'Neil, while regularly assigned as Car Distributor in the Chief Dispatcher's office at Jersey City, N. J., with assigned hours 8:00 a. m. to 5:00 p. m., (one hour allowed for meal), who was notified or called to commence work at 6:30 a. m. as clerk-telegrapher in the same office on fifty-six (56) intermittent days during the period November 11, 1943, through June 18, 1944, shall be paid a call under Rule 17-(b) of the telegraphers' agreement on each of the fifty-six days he was thus required to perform work in advance of his regular assigned work period.

EMPLOYES STATEMENT OF FACTS: An agreement bearing date July 1, 1940, as to rules of working conditions, and December 27, 1943, as to rates of pay, is in effect between the parties to this dispute.

J. A. O'Neil, the party in whose behalf claim is made, was regularly assigned to the position of Car Distributor during the period involved, a position covered by the telegraphers' agreement, with regular assigned hours 8:00 a. m. to 5:00 p. m. and one hour allowed for meal.

On November 11, 12, 13, 18, 19, 20, 21, 25, 26; December 19 and 20, 1943; February 4, 11 and 14; March 18, 22, 23, 24 and 25; April 2, 3, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29 and 30; May 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20 and 21; and June 18, 1944. (a total of fifty-six days), O'Neil was notified or called to commence work at 6:30 a. m. as Clerk-telegrapher in the same office.

O'Neil made claim for the payment of a call, three hours for two hours work or less, on each of the above mentioned days he was required to commence work in advance of his regular work period, as provided by Rule 17-(b) of the telegraphers' agreement.

The Carrier has declined the claim.

POSITION OF EMPLOYES: Rule 17-(b) of the telegraphers' agreement is invoked in this case and reads as follows:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum 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."

The claimant O'Neil was regularly assigned to the position of Car Distributor in the Chief Dispatcher's office at Jersey City, N. J., with hours 8:00 a. m. to 5:00 p. m. and one hour for meal regularly assigned.

was included in the agreement with the Telegraphers to cover cases of this kind. In some instances, the temporary assignment comprises the same hours on duty, while in others they are different—sometimes the difference of one hour and a half, as in this case, while in other cases it may be the difference of eight or sixteen hours, depending on the tricks. When an employee is required to do relief work under Rule 8, the hours of the temporary assignment become the hours of his assignment, and if any overtime is made, it is allowed in accordance with the rules. In this case, the hours of the clerk-telegrapher relieved by Mr. O'Neil were from 6:30 A. M. to 2:30 P. M., and no overtime involved.

The rule under which this claim is made is 17(b), reading as follows:

"CALL

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

It is our contention that this rule has no application to a case of this kind, but is definitely covered by Rule 8. Mr. O'Neil was temporarily assigned to a work period 6:30 A. M. to 2:30 P. M., and did not perform work not continuous with his assigned work period.

The use of Mr. O'Neil for relief work in this case was in line with the way men have been handled ever since the agreement was in effect, and no question raised heretofore. We believe that Rules 8 and 17(b) are clear and no confliction between the two rules, and I call attention to the fact that your Board has ruled on this question in other cases, particularly Awards No. 2444 and No. 2511, where the rules and conditions were similar to this case.

Therefore, we ask that the claim be denied.

OPINION OF BOARD: O'Neil was regularly assigned as a Car Distributor with hours from 8:00 a. m. to 5:00 p. m., one hour meal time. During the period stated in the claim the Carrier used him from time to time to fill the position of the Clerk-Telegrapher in the same office in which position he worked from 6:30 a. m. to 2:30 p. m.

Organization claims O'Neil is entitled to be paid a call for each day he was so used as he was required to work in advance of his usual work period.

Carrier justifies its action under Rule 4 providing that "employees temporarily or permanently assigned to higher rated positions and assuming the duties and responsibilities of the positions during the time occupied shall receive the rate of the positions". The same contention about such a rule and under similar conditions was made in Award 2823. There it was pointed out that such a rule is a rating provision and was not intended as an exception to the application of the overtime rules. And see Award 2859. We agree with such ruling and adhere to it.

Organization relies on Rule 17(b):

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum 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 time will be allowed on the minute basis."

And Rule 15:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

In addition Organization cites Interpretation No. 1 to Decision No. 757 of the United States Railroad Labor Board which holds that an employee who is required to report for duty before his regular starting time and continues to work through his regular shift shall be paid a call and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time.

Under the above Rules and Interpretation O'Neil's claim must be sustained
See Awards 813, 2205.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

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