

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Toledo Division: Claim of R. R. Lee, Ticket Agent at Depot Ticket Office, Toledo, Ohio, for time and one-half for nine hours worked on Sunday, his relief day, March 19, July 2 and 9, 1944.

JOINT STATEMENT OF FACTS: Toledo, Ohio, is a passenger agency on the Toledo Division of the Pennsylvania Railroad Company. The position of Ticket Agent at Toledo is listed in the applicable Agreement between the Carrier and its Station Agents and Assistant Agents, and in the Agreement the position is marked with an asterisk (*).

The parties have agreed that positions designated by an asterisk (*) in the Rate Schedule, applicable to Part I of the Agreement, shall not be subject to any of the provisions or Article I (Selection of Positions) or Article II (Seniority) of Part I of the Agreement. The manner of designating and filling such positions is set forth in, and governed solely by, the provisions of Article III (Excepted Positions) of Part I of the Agreement.

The position in question has an established rate of pay of \$295.10 per month and the duties normally comprehended in the assignment include the sale of tickets; handling of monies received therefrom; preparation of ticket reports; handling correspondence, and other duties incident to ticket sales. The hours of the assignment are 10:00 A. M. to 7:00 P. M. (one hour for lunch), daily except Sunday.

On Sundays the assignment is filled by a Substitute Agent, who is paid at the established rate of the position.

On Sundays, March 19th, July 2nd and 9th, 1944, the Substitute Agent was not available (Substitute Agent was off on account of sickness March 19th, and on vacation July 2nd and 9th) and Lee was required to work the assignment on those days. On each of the days involved, by reason of the volume of work to be performed, he was on duty nine hours. The Claimant was not allowed any compensation for the dates involved, in addition to his regular monthly rate of pay.

Claim was made for compensation at the rate of time and one-half the daily rate of the Ticket Agent position at Toledo for the service performed by the Claimant on the Sundays in question.

There is an Agreement between the Carrier and its employees of the class of which the Claimant is a member, governing the rules, rates of pay, and working conditions of the Claimant, which are applicable to the present claim.

This Agreement is known as "Agreement entered into by and between The Pennsylvania Railroad Company, Baltimore and Eastern Railroad Com-

(d) Nothing in Part I of this Agreement shall be construed as requiring the payment of compensation at the rate of a position to an employe for the part of a month before he is assigned to such position or for the part of a month after he ceased to occupy such position or such position is abolished."

Nothing in Section 1 (a), referred to by the General Chairman in support of his position, provides that Agents must be paid overtime compensation at the rate of time and one-half when they are required to perform work of their assignments on their off-duty days. The monthly rates were intended to cover all the work incident to their positions which they might be required to perform. In the instant case the Claimant was merely required to perform on certain off-duty days the usual work of his assignment. Under the provisions of Section 1 (a), he was not entitled to receive for this work any compensation, in addition to his established monthly rate.

Section 1 (a) provides no support for the contention of the employes but clearly supports the contention of the carrier. Paragraph (a), Section 1, provides that the monthly rate of pay of a position may be adjusted through negotiation if there are substantial changes in the number of days or number of hours constituting the monthly tour of the position. This is the only method provided in the applicable Agreement for paying Agents, for work performed outside their regular working hours or on their off-duty days, compensation other than their previously established monthly rates of pay. The method of increasing the monthly rates of pay of Agent positions, moreover, is applicable only where there is a permanent and substantial change in the monthly tour of duty. Obviously, therefore, the parties to the Agreement did not contemplate the payment of additional compensation to Agents when, as in the instant case, with no permanent substantial change in the number of days or hours of their monthly tour of duty, they are required to perform work outside their regular working hours or on their off-duty days.

In the instant case, the claimant was simply required to perform on certain Sundays, in the absence of the Substitute Agent who ordinarily relieved him on those days, the usual work of his assignment. Clearly no provision of Section 1 of the Agreement required the carrier to pay him compensation at the rate of time and one-half, in addition to his established monthly rate of pay for performing this work.

The carrier submits, therefore, that the Schedule provision cited by the General Chairman in this case fails to support his contention that the Claimant is entitled to compensation at the rate of time and one-half for the work in question.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employe in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

The carrier has established that, under the applicable Agreement, the claimant is not entitled to the additional compensation claimed.

Therefore, the carrier respectfully submits that your Honorable Board should dismiss the claim of the employe in this matter.

OPINION OF BOARD: This is a joint submission. The claimant is the regular assigned Ticket Agent in the depot ticket office at Toledo, Ohio. For this position the hours of the assignment are from 10:00 A. M. to 7:00 P. M.

(one hour for lunch) daily except Sunday. On Sunday the assignment is filled by a Substitute Agent who is paid at the rate of the position. On March 9, 1944, claimant was required to work this Sunday because the Substitute Agent was sick, and also on July 2 and 9, 1944, both dates being Sunday. Claimant was required to work these days on account of the fact that the Substitute Agent was on his vacation. On these three days he worked nine hours each.

The claim presented to the Carrier and this Board is that the claimant be paid for nine hours each on these dates at the rate of time and one-half. To support his claim, the claimant relies upon Article IV, Section 1(a) of the current Agreement. That rule reads:

"The monthly rates of pay specified in the Rate Schedule applicable to Part I of this Agreement, attached to and made part of this Agreement, are intended to compensate employees for all the services which they perform incident to their regular assignments. Whenever, subsequent to May 16, 1943, there is a substantial change in the number of days or number of hours constituting the monthly tour of duty of a position, or a substantial change in the duties or responsibilities of a position, adjustment in the monthly rate of pay for such position shall be a subject for negotiation between the proper officer of the Company and the duly accredited representative of employees."

At the hearing of the parties before this Board with a Referee present, the Petitioner frankly admitted that the above rule would not support the claim as presented, but under this rule the parties were required to negotiate whether the claimant should be paid extra compensation for working this position on the three days in question. The Board agrees that if the claimant is entitled to extra compensation it is a matter of negotiation.

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 question in dispute is one for negotiation.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.