

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the general committee of the Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana, that G. M. Haney, monthly rated agent at Robertson, Texas, shall be paid in accordance with Rules 13-(a), 13-(e) and 13-(d) at the time and one-half rate for all time worked in excess of eight hours, ranging from one hour to two and one-half hours, on June 24, 25, 26, and 30, 1943, and on July 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 23, 24, 27, 1943.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective Oct. 15, 1940 is on file with the National Railroad Adjustment Board:

Agent G. M. Haney claims payment for overtime worked on the dates specified in the foregoing statement of Claim. Payment is declined by the Carrier under the contention that the position of Agent at Robstown is a monthly rated position and Monthly Rate covers all service performed.

POSITION OF EMPLOYES: The basis of this claim rests on a question of fact. Do the rules of the agreement support the employees contention? Further can there be found in the agreement any rule, or any Exception to any of the rules, which will support the position of the carrier in declining payment of the Claim.

For ready convenience of the Board we quote the following rules of the Agreement which concern the Claim:

Rule 1.

SCOPE

- (a) This agreement will govern the employment and compensation of Relay Office managers, assistant managers, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, printer and traffic supervisors, operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices; and such agents and assistant agents (freight and ticket, as may be designated herein).

The word "employees" as used in these rules will apply to all of the foregoing classes and refers only to the employees covered by this agreement.

It is obvious from the foregoing that the contention and claim of the Employees that the position of supervisory agent at Robstown, which station is a star (*) agency compensated on a monthly basis to cover all services rendered, is entitled to overtime for service performed in excess of eight hours, is without basis; that the record clearly and conclusively shows that it has been mutually recognized and understood by the parties that the occupants of such positions are not entitled to overtime, and that it has not been the practice for the Employees to claim nor for the Carrier to allow overtime on such positions, in view of which this claim should be denied.

The submission of this case to the Adjustment Board is without question an attempt on the part of the Employees to obtain a new rule providing that monthly rated positions of agent at star (*) agencies will receive overtime contrary to the mutual understanding of the parties over the years as evidenced by the information contained in the "Position of Carrier". As the granting of new rules is a function not coming within the province of the Adjustment Board, the contentions and accompanying claim of the Employees should be dismissed for lack of jurisdiction.

OPINION OF BOARD: The position of Agent at Robstown, Texas, is a star (*) station and is compensated on a monthly basis. The Agent in charge thereof is a Supervisory Agent who performs no telegrapher service. The monthly rate of pay is specified in Rule 37.

The claim is for overtime work on the dates specified in this claim. The Employees contend that the Agent is entitled to time and one-half for all time worked in excess of eight hours on those dates in addition to his regular monthly rate of pay. The Carrier contends that at a star (*) station where the Agent does no telegrapher's work that the monthly rate compensates the Agent for all services rendered.

To support their claim the Employees rely upon Rule 1—Scope, Rule 13—Hours of Service, Overtime, Calls, Handling Train Orders, Etc., Rule 36—Bulletining of Star Stations and Classifications of Employees, and Rule 37—Rates of Pay and Classification. The Carrier relies upon Rules 4, 36 and 37, and settlements to support its contention.

Rule 4 reads:

"Unless otherwise mutually agreed upon by the Carrier and the duly accredited representative of the Organization, employees covered by this agreement will be paid on the hourly basis."

Under Rule 37, it was agreed that the Agent at Robstown, Texas, would be paid monthly. To support its claim that Star Agents who do no telegrapher's work are compensated at the monthly rate for all services, the Carrier quotes two letters written by the General Chairman dated September 2, 1938. These letters were in reference to Agent R. C. Hollified for overtime. He was a monthly rated Employee but since he also did telegrapher's work the General Chairman contended that his claim should be sustained. The clear implication from these letters is that if he were only a supervisory Agent at a star (*) agency, then his monthly rate would be fixed to include overtime that was necessary for the Agent to perform. In other words, these letters are admission that the Carrier's position is correct.

But the Employees say that since these letters were written there has been executed a new contract and, therefore, these letters would in no way effect this contract which became effective October 15, 1940. The answer to that contention is that there has been no material change with reference to the rules relied upon by the Employees, in fact they are almost word for word with the same rules of the 1930 contract. It follows that the interpretation put on the 1930 contract would be carried over into the 1940 contract, absent a change in the Agreement, therefore, the claim should be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 there is no violation of 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 January, 1947.