

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS-SOUTHWESTERN RAILWAY LINES
(Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Lines, that Telegrapher C. J. McClain, regularly assigned to work 4:00 P.M. to 12:00 midnight in the relay office at Pine Bluff, Arkansas, who was absent from work on January 13 (his rest day), January 14, 15, and 16, 1947, on account of sickness of his wife, and who was required to perform relief work in the same office 12:00 midnight to 8:00 A.M. on January 17, 1947, and also work 4:00 P. M. to 12:00 midnight on his regular position on the same day, January 17, 1947, shall be paid at time and one-half rate for the eight hours worked 4:00 P.M. to 12:00 midnight on this day in excess of the eight hours worked 12:00 midnight to 8:00 A.M. on the same day, in accordance with the provisions of Article 6-1 of the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties to this dispute, bearing effective date of December 1, 1934. Several rules have been revised and rates of pay have been increased subsequent to the effective date of the agreement.

Telegrapher C. J. McClain was regularly assigned to a position of telegrapher in the Pine Bluff, Arkansas relay office, assigned hours 4:00 P.M. to 12:00 midnight. McClain was absent from his position on January 13 (his rest day) and January 14, 15, and 16, 1947, account sickness in his family.

Sometime during the day January 16, 1947, third trick telegrapher, F. A. Grindstaff, reported sick and unable to fill his position 12:00 midnight to 8:00 A.M. January 17. Because no extra employe was available, Claimant McClain was notified and required to report at midnight and perform the relief work 12:00 midnight to 8:00 A.M. January 17, 1947, for which service he was compensated at the rate of time and one-half, pursuant to the provisions of the second paragraph of Article 16 of the Telegraphers' Agreement.

After having but eight (8) hours off duty, McClain was required to work his regularly assigned position in the same office, hours 4:00 P.M. to 12:00 midnight, thus actually having worked two 8-hour periods, or a total of sixteen (16) hours, within the same 24-hour period January 17, 1947.

McClain was paid pro rata rate of the position worked for the second 8-hour period, 4:00 P.M. to 12:00 midnight. The claim is for the rate of time and one-half for the second 8-hour period worked.

The assigned hours of Telegrapher Scarff were from 3:00 P.M. to 11:00 P.M. On October 25 he worked only 4 hours on his assignment and was required to fill the succeeding shift working from 11:00 P.M. to 7:00 A.M. He returned to his own assignment at 3:00 P.M. the same date. Thus the circumstances were identical with those in the present case, except that Telegrapher Scarff worked 4 hours on his own assignment prior to working the shift outside his assigned hours in emergency. He was paid time and one-half rate under Revised Article 16 for the 8 hours worked outside his assigned hours and was paid 8 hours straight time for the next shift on his assignment. There was no controversy on that point, the claim involved an underpayment on October 24, due to an error in the employee's time slip. The above tabulation was made in the letter January 2, 1947, to General Chairman Fitzhugh (Exhibit 12) to show the exact time worked and the payment made during the period in question. General Chairman Fitzhugh accepted the payment tabulated as being correct (Exhibit 13).

Thus, it is apparent that as late as one month prior to filing the present claim, the General Chairman agreed that payment such as made in the present case was correct.

The rules involved are plain and their application has been well established during the years they have been in effect. The Carrier respectfully submits that the rules do not support the present claim, and requests that such claim be denied.

Exhibits not reproduced.

OPINION OF BOARD: The claimant's regularly assigned working hours were 4:00 P.M. to 12 midnight. January 16, 1947, he did not work his regular trick because of illness in his family. He was required to work the next shift, 12:00 midnight to 8:00 A.M. in the same office on account of the illness of the employee regularly assigned to that shift. On the same date claimant returned to his regular assignment working 4:00 P.M. to 12:00 midnight.

The claimant, pursuant to Rule 16 of the agreement, was paid time and one-half for working the shift 12:00 midnight to 8:00 A.M. He was paid straight time for working his own shift.

The claim is for payment at the rate of time and one-half for claimant's work on his own shift on the day in question.

The claim is based on Article 6-1 of the agreement, which provides:

"Except as otherwise provided, time worked in excess of eight (8) hours, * * * will be considered overtime and paid on the actual minute basis at time and one-half rate."

Revised Article 16 of the agreement provides in the second paragraph thereof that a regularly assigned employee used to perform relief or emergency work in the office to which he is assigned "will be paid at the rate of time and one-half only for the hours worked outside of his regularly assigned hours, or for the time worked in excess of eight hours on any day." Under the latter rule the claimant was paid time and one-half for the shift of eight hours from 12:00 midnight to 8:00 A.M. on January 17.

The parties agree that penalty payments are never duplicated on the same hours. In other words, if this man had worked his regular shift on January 16, the relief work which he did would have been time worked in excess of eight hours and would also have been time worked outside of his regularly assigned hours, but he would only have been paid at the rate of time and one-half. The application of this same principle is shown in cases where an employee is called to work three hours in advance of his assigned starting time. He is paid time and one-half for such three hours, but Article 6-1 is not interpreted by the parties as requiring a second payment of time and one-half for three hours of his regular assignment.

Likewise, where an employe is required to work three hours overtime immediately following his regular working period under the interpretation of the rules by the parties he is paid for such three hours at time and one-half rate under Article 6-3, but Article 6-1 does not require time and one-half rate for the first three hours of his next regular assignment.

To permit the claimant here to collect time and one-half for the hours worked in his regular assignment would be in effect permitting him to claim two penalty payments on the eight hours relief work he did, one, on the theory that it was work performed outside of his regular hours of duty and, two, that it was work performed in excess of eight hours. This would be inequitable, and we know of no award which has so interpreted any similar agreement.

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 parties waived oral hearing thereon;

That the Carrier and the Employee 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; and

That the agreement was not violated by the Carrier.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1948.