

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY  
(Line West of Buffalo)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company, Line West of Buffalo, that R. J. Williams be compensated at time and one-half rate for service performed at Albany, Ohio, February 21, 1947.

**EMPLOYEES' STATEMENT OF FACTS:** An Agreement by and between the parties bearing effective date of July 1, 1946, hereinafter referred to as the 'Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Albany, Ohio, is a continuously operated office employing three eight-hour tricks. Pursuant to the provisions of Article 10, Section 1, of the Telegraphers' Agreement, the Carrier assigned one rest day each calendar week to each position. The third trick, assigned hours 11:00 P. M. to 7:00 A. M., was assigned Friday as the rest day.

Relief position No. 2 regularly bulletined and filled, comprehends six (6) days' work each calendar week, viz., Sunday through Friday. Saturday is the rest day assigned to relief position No. 2. The six assignments included in relief position No. 2 are:

Sunday	1st trick	Albany, Ohio	7:00 A. M. to 3:00 P. M.
Monday	2nd trick	Albany, Ohio	3:00 P. M. to 11:00 P. M.
Tuesday	2nd trick	Carpenter, Ohio	3:00 P. M. to 11:00 P. M.
Wednesday	2nd trick	Chauncey, Ohio	3:55 P. M. to 11:55 P. M.
Thursday	3rd trick	Carpenter, Ohio	11:00 P. M. to 7:00 A. M.
Friday	3rd trick	Albany, Ohio	11:00 P. M. to 7:00 A. M.

The regularly assigned third trick employe at Albany was absent from duty account illness Thursday, February 20, 1947, through Thursday, March 6, 1947. Extra employe R. J. Williams, seniority date February 20, 1945, was instructed and did protect this vacancy.

Friday, February 21, 1947, which was the rest day assigned to the third trick at Albany and which is one of the assignments included in relief position No. 2, the regular incumbent of relief position No. 2 was absent from duty account illness. R. J. Williams was instructed to and did work on this Friday, the rest day assigned to the position he occupied. Mr. Williams, for the service performed on the rest day assigned to the position he occupied, was allowed only straight time rate by the Carrier as against his claim for time and one-half.

The following statement quoted from the Opinion of Board with Jay S. Parker as referee in Third Division Award 2622 is particularly relevant to the circumstances of the instant claim:

"An elementary rule applicable to the construction of all contracts and agreements is that the rights of the parties thereto are to be determined by the language to be found in the instruments themselves. Otherwise stated, contractual rights are to be determined from the four corners of the agreement executed by the parties. Unless language expressly or impliedly authorizing payment of eight (8) hours' pay at rate and one-half for service . . . can be found in the agreements themselves it is not within the province of this Board to read into them any such meaning or import. To adopt the practice of broadening or extending the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employee and carrier. Far better for all concerned is a course or procedure which adheres to the elemental rule, leaving it up to the parties by negotiation or other proper procedure to make certain that which has been uncertain."

### CONCLUSION

The last several pages of the employees' position submitted, as they state on page 7, "after having had the opportunity to review the Carrier's 'Position' by an exchange of Positions on the property . . .", is simply continued repetition of the same opinionated, unsupported arguments advanced by the employees in conference and included in previous pages of their submission, but now frequently interspersed with sarcasm and innuendos which do not, in the slightest degree, alter applicable agreement rules.

The carrier considers it undesirable and wholly unnecessary to again refute each separate repeated allegation set forth by the employees in those several pages of unwarranted statements so lacking in dignity that they do not merit further rebuttal reply. It is common knowledge that one primary purpose of joint submissions to the Board is to make exchange of positions on the property and be sure that each party is fully familiar with all arguments of the other party. Suffice it to here reaffirm that the instant claim is not supported by the applicable agreement rules in effect on this property.

The Carrier has shown that the instant claim should be dismissed because it is equivalent to a request for a new rule which the Board is not empowered to grant,

and, if not dismissed, should be denied because

1. Claimant was paid in accordance with the applicable rules.
2. The employees do not indicate in what manner any existing rule supports the instant claim.
3. Rules of the applicable agreement actually refute the claim.
4. Awards of the National Railroad Adjustment Board uphold the carrier's position.
5. The claim is without merit, entirely unjustified by any technical, equitable or reasonable premise and is not supported by any rule, understanding or practice.

**OPINION OF BOARD:** The regularly assigned incumbent of the third trick telegrapher position at Albany, Ohio, was absent on account of illness from February 20th to March 6, 1947. This was a seven-day position with Friday as the relief day. A regularly assigned relief employee ordinarily filled the position on Fridays, but he, too, was unavailable on account of sickness on Friday, February 21st.

The Claimant, an extra employe, worked continuously on the position for thirteen days, between February 20th and March 6th, including Friday, February 21st. For this service he was paid at the pro rata rate and the Claim is that he should have been compensated at time and one-half for February 21st.

The disposition of the Claim will turn upon the answer to this question: Is the Claimant to be regarded as having filled the regularly assigned telegrapher's position on February 21st, or was he filling the position of the relief telegrapher? The occupant of the regular position, if required to work on his rest day, was entitled to be compensated at the punitive rate; while an extra telegrapher working in the place of the relief employe regularly assigned to the rest day of the regular position was only entitled to the pro rata rate.

In that part of the Joint Submission devoted to the Carrier's Statement of Facts, it is said:

"In the absence of both the telegrapher regularly assigned to the third trick at Albany and the regular relief telegrapher whose assignment included third trick relief at Albany on Friday of each week, and because no other extra employe was available, Extra Operator Williams, who had worked in place of the regularly assigned third trick telegrapher at Albany on Thursday, February 20, 1947, worked the third trick at Albany, Friday night, February 21st in place of the regularly assigned relief telegrapher."

From the foregoing recital of facts the Carrier deduces that on Friday, February 21st, the Claimant was working "in place of the regularly assigned relief telegrapher", instead of on the regularly assigned telegrapher's position. With that conclusion we cannot agree. It is to be noted that the Carrier admits that it used the Claimant because "both the telegrapher regularly assigned . . . and the regular relief telegrapher" were unavailable, and "because no other extra employe was available". This is tantamount to an admission, we think, that if the regularly assigned telegrapher had been able to work on Friday, the 21st, he would have been used at the overtime rate, in preference to the Claimant. Had the admission been only that the Carrier elected to exercise its right and privilege to make use of a qualified extra telegrapher on the rest day of the regularly assigned telegrapher position, because the regularly assigned relief telegrapher was absent on account of illness, we would have been required to deal with this Claim on some other basis.

If the theory now advanced by the Carrier is sound, the fact that the regular occupant of the position was unable to work on the 21st would be wholly immaterial, since Carrier had the unqualified right to replace him with a relief or extra employe on the rest day. We must conclude, therefore, that on the day in question the Claimant, at the election of the Carrier, was working on the regularly assigned telegrapher position, and that by virtue of Article 21 of the Agreement the Claimant is entitled to the same compensation that the regular occupant of that position would have received, had he worked on his rest day.

We predicate our conclusion upon the specific facts disclosed by the record before us, as quoted above, and this opinion is not to be construed as a comprehensive interpretation of the Agreement.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 according to its admissions of the record, the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.