

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad, that:

1. Operator F. B. Higgins owning regular assignment as Block Operator 6:00 A.M. to 2:00 P.M., 'Pensauken' Block Station; and, Mrs. E. R. K. Meherer owning regular assignment as Block Operator 10:00 P.M. to 6:00 A.M., 'Pensauken' Block Station, were each required after finishing a tour of duty to open up a new Block Station at 'Jordan' Block Station at 4:00 A.M. May 18, 1947, and 9:00 P.M. May 29, 1947, respectively, each performing less than an 8-hour tour of duty.

2. Operator Higgins and Meherer shall be paid an 8-hour day's pay at time and one-half each for performing service on a second tour of duty off their regular assignment at hours not continuous with their regular work period.

EMPLOYEE'S STATEMENT OF FACT: On May 18, 1947, F. B. Higgins held regular assignment as Block Operator, first trick, tour of duty 6:00 A.M. to 2:00 P.M., at "Pensauken" Block Station, relief day Sunday.

On Sunday, May 18, 1947, because of no available extra Block Operators, he was called and required to open "Jordan" Block Station, reporting at 4:00 A.M. He was released at 9:15 A.M. and for the service performed was paid five hours and fifteen minutes at the overtime rate.

Mrs. E. R. K. Meherer held regular assignment as Block Operator third trick, tour of duty 10:00 P.M. to 6:00 A.M., "Pensauken" Block Station, relief day Thursday.

On Thursday, May 29, 1947, because of no available extra Block Operators, she was called and required to open "Jordan" Block Station, reporting at 9:00 P.M. She was released at 11:15 P.M. and for the service performed, was paid 2 hours and 15 minutes at the overtime rate.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, Rules and Rates of Pay effective May 16, 1943.

"Pensauken" Block Station, 1st., 2nd. and 3rd. tricks is in the Wage Scale of the current Agreement, rate of pay \$1.2275 per hour. Symbol (o) indicates, by foot note, "Temporary position for duration of National emergency."

"Jordan" Block Station, 1st., 2nd. and 3rd. tricks, is in Wage Scale of the current Agreement, rate of pay, \$1.2275 per hour, with identical symbol, that it is a "temporary position for the duration of the National emergency."

work, except that where two or more shifts are worked, eight consecutive hours with no allowance for meals shall constitute a day's work."

Thus, in Decision 58, the Reviewing Committee, established the principle that an extra employe performing two tours of duty in a 24-hour period is entitled to payment of eight hours for each tour of duty only at the straight time rate.

A copy of Telegraphers' Reviewing Committee Decision No. 58, is attached hereto and made a part of this submission as Exhibit "A".

It is clear that Decision No. 58 can have no application to the instant case. The Carrier submits there is nothing contained in Decision No. 58 which supports the General Chairman's contention that a regularly assigned employe assumes the status of an extra employe when he accepts a call for work not continuous with his regular assigned work period or when he performs service on his assigned relief day. If such a contention is sustained then it is obvious that Sections 4-C and 9-b of Article 5 of the applicable agreement are meaningless and superfluous.

The Carrier submits therefore, that the contentions set forth by the Employes furnish no support for the instant claim.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

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 Agreements between the parties to it. To grant the claim of the Employes 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.

CONCLUSION

The Carrier has shown that the Claimants have been properly compensated for the service performed on the dates in question and are not entitled to the additional compensation claimed under the provisions of the applicable Agreement.

It is, therefore, respectfully submitted that the claim is without foundation under the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are two block operators, one holding the regularly assigned position of first trick operator, and the other that of third trick operator at Pensauken Block Station. Each was required, because no extra employe was available, to open the previously abolished Jordan Block Station, incident to a special train movement, and was paid for the time actually worked on such assignment, which was less than eight hours in each case, at overtime rate.

Carrier justifies this payment under Article V, Section 4(c) of the Agreement in that, it is said, they are called to perform work not continuous with

the regular work period. The Committee claims compensation should be for eight hours, in each case, under Article V, Section 4(d), and at the overtime rate since their assignment was to work on another station than that to which they were regularly assigned and they had no prior right to be used on the position.

Claimants were given these extra assignments under agreement between the parties that such regularly assigned employees could properly be used to perform extra work when all qualified extra employees had been used for a tour of duty within a 24-hour period, without encroachment upon the right of the extra employees. It is admitted that under this agreement a regularly assigned employee acquired no prior right to be so used. Their use in lieu of extra employees did not make them extra employees.

The rules primarily relied upon read as follows:

Article V, Section 4(a):

"For hourly rated employees, time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis, at time and one-half rate, except as otherwise provided in Paragraphs (b), (c) and (d) of this Section (4).

Article V, Section 4 (c):

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

Article V, Section 4 (d):

"If an employee performs work on two positions within a twenty-four (24) hour period and, under any provisions of this Agreement, he has a prior right to be used in both of such positions, he shall be paid at the straight time rate for the first eight (8) hours of service on each position. For time worked in excess of eight (8) hours on either position so worked, he shall be paid at the rate of time and one-half."

The Committee points to Decision No. 58 of the Telegraphers' Reviewing Committee as sustaining its position. There an extra block operator after working an eight-hour tour of duty at "Q" Tower, was called two hours later due to derailment to assist the leverman at "N" Tower. There he worked six hours and made claim for six hours at punitive rate, under the then rule equivalent to the present Section 4(c), but the Reviewing Committee held that rule not applicable for the reason that an extra employee has no regular work period. Claimants here, being regularly assigned employees, do have a regular work period so the reason underlying the Reviewing Committee decision does not here exist.

Section 4(d) does not apply here for the reason that neither claimant here had a prior right to be used at Jordan Block Station. Claimants were not performing work on two existing positions to which they had prior right but were performing work not continuous with the regular work period and were entitled to compensation under the Call Rule Section 4(c).

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 there was no violation of the Agreement.

AWARD

Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.