

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

Operator J. E. Adams who was ordered to work first trick "KRAFT" on September 7, 1947, and who worked that position 6:00 A.M. to 8:00 A.M. and then taken off and sent to relieve third trick operator at "DAVIS" Tower 8:00 A.M. to 3:00 P.M., is entitled to an eight hour day, 6:00 A.M. to 8:00 A.M. for service performed at "KRAFT" as provided in Article V, Section 2; and eight hours at time and one-half rate for working a second tour of duty at "DAVIS" Tower as provided by Article V, Section 4(c) and (d) of the current agreement.

EMPLOYEE'S STATEMENT OF FACT: The Claimant is an extra employee on the Indianapolis Division and is used to protect vacancies as they occur.

On September 7th, 1947, the Claimant was called for service on first trick at "KRAFT" Tower, hours 6:00 A.M. to 2:00 P.M. and worked 6:00 A.M. to 8:00 A.M., when he was taken off this trick at this Tower and sent to "DAVIS" Tower to relieve the third trick operator and worked from 8:00 A.M. to 3:00 P.M. Both Kraft and Davis Towers are located within the Indianapolis Terminal territory.

Claimant filed a time slip for 8 hours payment for the work performed at Kraft Tower, 6:00 A.M. to 8:00 A.M., one assignment; and a day's pay at Davis Tower at overtime rate of pay for the service performed 8:00 A.M. to 3:00 P.M. on a second assignment.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, Rates of Pay and Rules effective May 16, 1943, with adjustments to be added to the Rates of Pay in the Wage Scale.

The Committee invokes the following Rules of the Agreement as support for the instant claim:

ARTICLE V

SECTION 2. "Except as otherwise provided in Section 3 of this Article (V), eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work at offices where only one shift is worked. At offices where more than one shift is worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work."

SECTION 4(c). "Employees notified or called to perform work not continuous with the regular work period will be allowed a mini-

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 any such action.

CONCLUSION

The Carrier has shown that the Claimant is only entitled to eight hours at the straight time rate and one hour at the time and one-half rate for the time hours' continuous service performed and is therefore not entitled to the compensation which he claims.

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

(Exhibits not reproduced).

OPINION OF BOARD: An extra operator used in protecting vacancies was assigned to work the first trick at Kraft Tower at Indianapolis, hours 6 A.M. to 2 P.M. After working two hours he was recalled from that position and assigned to fill a vacancy at Davis Tower where he worked from 8 A.M. to 3 P.M. He was paid for eight hours at straight time rate and for one hour at overtime rate.

Claim is made for eight hours' payment for the first two hour tour of duty at Kraft Tower, at straight time rate, and for eight hours' payment for the second tour of duty at Davis Tower, at overtime rate, on the ground that an employee called for service and used to perform work is entitled to a minimum of eight hours' pay for work on the position to which he is first assigned, and is entitled to the minimum of eight hours' pay, as for an independent assignment, for time worked on a second position, which must be at the punitive rate where within a 24-hour period, absent a demand right to work the second tour of duty.

Carrier contends that "when an Extra Block Operator starts to perform service it is proper to use him for eight consecutive hours on the basis of straight time pay for the first eight hours regardless of the fact that, in working consecutively, he may be used on two separate locations," in accordance with Article V, Section 2, of the Agreement, providing that eight hours shall constitute a day's work.

One of the striking characteristics of railroad employment contracts is that they gravitate primarily not around the employee and not around the work, but around the position. Positions, not work, are advertised and bid for and awarded. Seniority is exercised not on work but on positions. Certain positions, not employees, are excepted from rules. Rates of pay, hours of service and relief days attach not to employees but to positions. An extra employee is called not to work but to a position. So Article V, Section 8 of Part II of the Agreement, provides that if called and not used he shall be allowed "three (3) hours' pay at the straight time rate of the position for which he was called." (Emphasis supplied.) Article V, Section 2 of the Agreement, upon which Carrier relies, makes one provision for a day's work "At offices where only one shift is worked" and a different provision for a day's work at other offices, and Article 5, Section 4 (d) makes provision "If an employee performs work on two positions." A day's work under the contract, then, can only mean a day's work at the position for which the employee is called. That this is the recognized interpretation is borne out by the exhibits attached to Claimant's submission.

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 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 19th day of January, 1950.