Award No. 4959
Docket No. TE-4935

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company that T. J. Smith, a regular assigned employe who was required to perform relief work on a position other than his own on April 12, 13, 14, 18, 19, 20, 21, 25, 26, 27 and 28, 1948, and May 2, 1948, on hours wholly outside of his regular assignment, shall be paid at the rate of time and one-half under the provisions of Rule 9-(b) of the telegraphers' agreement for each day thus worked instead of at the pro rata rate at which he was paid.

JOINT STATEMENT OF FACTS: This dispute involves the question as to compensation due a regular assigned employe performing relief work in an emergency.

Telegrapher T. J. Smith, regularly assigned to a rest day relief position in Chicago Terminal, has the following assignment:

Sundays	—Tower A-5—1st trick,	7:00	a.m.	to	3:00	p.m.
Mondays	—Cragin Jct.—1st trick,	7:00	a.m.	to	3:00	p.m.
Tuesdays	—Cragin Jct.—2nd trick,	3:00	p.m.	to	11:00	p.m.
Wednesdays	—Tower A-5—2nd trick,	3:00	p.m.	to	11:00	p.m.
Thursdays	—Tower A-5—3rd trick,	11:00	p.m.	to	7:00	a.m.
Fridays	—Cragin Jct.—3rd trick,	11:00	p.m.	to	7:00	a.m.
Saturdays	—Rest Day					

The third trick at Cragin Junction, assigned hours 11:00 P.M. to 7:00 A.M. daily, is regularly assigned to Telegrapher E. H. Boelke. Telegrapher Boelke met with an accident requiring him to be absent from work during the period April 12th to May 2nd, inclusive, 1948. As there was no extra telegrapher available to fill Telegrapher Boelke's position, the Carrier directed Telegrapher Smith to perform the relief work on Telegrapher Boelke's position and the regularly assigned employes at Tower A-5 and Cragin Junction worked their rest days during the mentioned period.

The agreement effective April 1, 1947 is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 9-(b) of the Telegraphers' Agreement provides that:

> ". . . time worked . . . outside the assigned hours of the position will be considered overtime and paid for on the actual minute basis at the time and one-half rate."

trick telegrapher with assigned hours from 4:00 P.M. to Midnight having to perform relief work on a third trick with hours from 12 Midnight to 8:00 A.M.; a regularly assigned first trick telegrapher with hours from 8:00 A.M. to 4:00 P.M. having to perform relief work on a second or a third trick, or a regularly assigned second or third trick telegrapher having to perform relief work on a first trick. Such cases have occurred many times throughout the past forty-five years without any question having been raised about payment of overtime because the assigned hours of the position upon which relief work was performed were different than the assigned hours of the position from which the employes were taken.

Rule 9 (b), relied upon by the Organization as support for this claim, has never been applied, nor was it ever intended to be applied as the Organization is here trying to contend. The rule clearly provides for payment of overtime for time worked outside the assigned hours of the position worked, and not to some other position.

The Carrier does not require regularly assigned employes to perform relief work except as a last resort because each time this does occur the Carrier is penalized under Rule 14 (b) to the extent of having to assume additional expense. As an example of this, using Telegrapher Smith to perform the relief work at Cragin Junction resulted in the Carrier having to pay all of the regularly assigned employes at Tower A-5 and Cragin Junction the time and one-half rate one day per week because of those employes not being relieved on their rest days. Where the Carrier is penalized under Rule 14 (b), certainly there should be no further penalty assessed against the Carrier under some other rule. This Board has repeatedly held that where an agreement fixes one penalty the Board may not add an additional nor different one.

It is the Carrier's position that Rule 14 (b) and not Rule 9 (b) is applicable in this dispute; that Telegrapher Smith has been properly compensated at the straight time rate of his regularly assigned position while performing the relief work at Cragin Junction; that the claim for additional payment of time and one-half rate is not supported by the agreement and should be denied.

OPINION OF BOARD: The facts of this case are not in conflict and can be briefly stated.

The Carrier operates interlocking plants at Tower A-5 and Cragin Junction, located a mile apart, 24 hours each day in its Chicago terminal.

Telegrapher T. J. Smith, assigned to a rest day relief position, worked three days a week at Tower A-5 and three days a week at Cragin Junction, relieving telegraphers at each plant on their rest days. His assigned hours on those days were the hours of the six positions he worked.

Boelke, an employe regularly assigned to the third trick at Cragin Junction, met with an accident which necessitated his absence from work April 12 to May 2, 1948. As no extra telegrapher was available the Carrier directed Smith to fill Boelke's third trick position and the regularly assigned employes of the other positions at Tower A-5 and Cragin Junction to work their rest days during that interim. This, of course, resulted in Smith's working seven days per week at Cragin Junction at hours, some of which were different than those of his regular position.

It is agreed the absence of the third trick telegrapher constituted an emergency under the provisions of Rule 14 of the Agreement and that while Smith performed the work of that position he was paid under and in accord with its terms.

The claimant's position is that he should have been paid under the overtime rule at the rate of time and one-half.

Thus it becomes apparent the sole issue involved requires us to construe and apply pertinent provisions of the contract.

Rule 9 (b), on which the claimant relied to sustain his position, relates, as we have heretofore indicated, to pay for overtime work and reads:

> "Except as provided in paragraph (c) of this rule, time worked in excess of eight (8) hours on any day or outside the assigned hours of the position will be considered overtime and paid for on the actual minute basis at the time and one-half rate."

Rule 14 (b), which the Carrier insists is applicable and warrants payment of compensation as already made to claimant, provides:

> "Regularly assigned employes shall not be required to perform relief work except in cases of emergency. When required or permitted to perform such service, they shall receive the rate of the position upon which relieving or the rate of the position from which taken, whichever is the greater, including actual loss in commissions, and in addition thereto, shall be allowed $2.00 per calendar day for expenses while away from their regular assigned station."

At the outset it must be conceded there seems to be some inconsistency if not overlapping in the terms of the foregoing provisions of the contract. In such a situation our duty is clear. We must harmonize and give force and effect to what is to be found in each rule if that is possible. In doing that it will, of course, be necessary to recognize and apply universal principles of contractual construction. Three of such principles, so well established that they need no citation of authorities to support them, have particular application here. One is to the effect that as between general and special provisions of a contract the special controls the general. Another is that when some of the terms of an agreement are inconsistent, uncertain or ambiguous they will be construed so that no part of the contract will be disregarded or made meaningless. Still another is that where language of one provision or rule of a contract is susceptible of two interpretations, one of which will nullify another and the other give it meaning, it will be construed in such manner as to give both provisions force and effect.

Claimant bases this right to overtime pay on the single premise that the phrase "or outside the assigned hours of the position" as it appears in 9 (b) has reference to the regularly assigned position held by an employe. Otherwise stated, if an employe is temporarily assigned to and works another position with hours different than those of his regular assignment his work, under its terms, is to be considered as overtime. On the other hand, the Carrier insists the phrase just quoted must be construed as having application to the assigned hours of the position worked. Let us see.

Careful examination of the two rules involved makes it apparent that 9 (b), dealing with overtime, is general in nature whereas 14 (b) is special in that it is restricted to the particular subject of emergency relief work and pay therefor. Upon analysis of the terms of the latter rule it clearly appears it not only contemplates an employe may be taken from a regular assignment in event of an emergency and assigned another position but expressly provides the rate of pay he is to receive when he works it, namely the rate of the position he is relieving or that from which he is taken, whichever is the greater. When both rules are read together and closely analyzed it becomes obvious that to give Rule 9 (b) the construction contended for by the claimant would result in complete nullification of the express provisions of the Rule 14 (b) to which we have just referred. Therefore, applying the principles of contractual construction heretofore mentioned, it necessarily follows, and we hold, that the phrase "or outside the assigned hours of the position", as used in 9 (b), has reference to the hours of the position worked. So construed all provisions of both rules are in harmony and remain in full force and effect. The result is that

Rule 14 (b) is decisive of the rate of pay claimant was entitled to receive under the existing facts and circumstances.

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 Employes involved in this dispute are respectively carrier and employes 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.