

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines:

(1) that the Carrier violated the rules of the current agreement between the parties when on January 18, 1948, it blanked the position of third telegrapher-clerk at Coyote, California; and

(2) that E. O. Schuster and Mary R. Corcoran, who were available shall be paid four hours each at the overtime rate because not permitted to fill the said third telegrapher-clerk position at Coyote, California, January 18, 1948, on overtime basis.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of December 1, 1944, which agreement (hereinafter referred to as the agreement) was in effect on the date involved in the instant claim. A copy of the agreement is on file with this Board and is hereby made a part of this dispute.

2. The Carrier maintains an agency and telegraph office at Coyote, California, located on the Carrier's Coast Division, 12.3 miles west of San Jose, California. This station is operated continuously 24 hours per day, 7 days per week, with an agent-telegrapher assigned 8:00 A. M. to 4:00 P. M., one telegrapher-clerk assigned 4:00 P. M. to 12:00 Midnight, and one telegrapher-clerk 12:01 A. M. to 8:00 A. M., daily except assigned relief days. A relief employee was being used to relieve each employee at Coyote one day per week in order to provide one rest day each week.

3. On January 18, 1948, telegrapher-clerk assigned to work 12:01 A. M. to 8:00 A. M. failed to report for duty. The carrier declined to work E. O. Schuster, telegrapher-clerk regularly assigned 4:00 P. M. to 12:00 Midnight, from 12:01 A. M. to 4:00 A. M. in addition to his regular assignment, and to work claimant, Telegrapher-Clerk Mary R. Corcoran, regularly assigned on this date 8:00 A. M. to 4:00 P. M., from 4:00 A. M. to 8:00 A. M. on a call basis. Instead the position was blanked. Both claimants were available for service.

4. The local chairman submitted claim in behalf of the claimants to the carrier's division superintendent for four hours at overtime rate January 18, 1948, basing said claim on the provisions of Rule 1, 2(c), 5, 14, 15 and

" . . . Provided, That no operator, train dispatcher, or other employe who by use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated during the daytime, except in case of emergency, when the employes named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period of not exceeding three days in any week."

having contended that no emergency existed as contemplated by the Act.

In the instant claim, the 3rd trick telegrapher, who failed to report for duty on his assignment, 12:01 A. M. to 8:00 A. M., January 18, 1948, was not absent by reason of illness.

Investigation developed that the 3rd trick telegrapher, who failed to report for duty or to call in and furnish his supervisor with information to the effect he would not report, failed to report by reason of his alarm clock not awakening him, resulting in his oversleeping. As soon as it was definitely known that the 3rd trick telegrapher would not report, the position was blanked.

It is, therefore, the position of the carrier that no emergency existed in the station at Coyote that would have justified working the claimants in excess of eight (8) hours on January 18, 1948, in violation of the Federal Hours of Service Act. If the carrier had worked said claimants it would have been subject to a penalty under the Act. Since the claimants performed no service outside the hours of their assignment, there is no basis or agreement support for their claim for four (4) hours each at overtime rate, January 18, 1948.

Carrier asserts that it has proved beyond a reasonable doubt that neither the agreement provisions nor Award 3631, cited by the petitioner support the instant claim and respectfully requests the Division to so find and deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The regularly assigned telegrapher-clerk at Coyote, California, a station operated continuously twenty-four hours a day, seven days a week, whose assigned hours were 12:01 A. M. to 8:00 A. M., failed to report for duty on January 18, 1948, because he overslept. The Carrier blanked the position for that shift, and the regularly assigned telegrapher-clerk, hours 8:00 P. M. to 12:00 Midnight, claims four hours at time and one-half because the Carrier refused to use him, 12:01 to 4:00 A. M., and the telegrapher-clerk, regularly assigned 8:00 A. M. to 4:00 P. M., likewise claims four hours at time and one-half because the Carrier did not assign her the work on that day from 4:00 A. M. to 8:00 A. M., both on a call basis. The claimants worked their regular assignments and were paid in accordance with the Agreement.

The rules cited by Petitioner have not been violated. No person not covered by the Scope Rule (Rule 1) was employed; no person was assigned work in violation of the Seniority Rule (Rule 2); the claimants have been paid in accordance with the Guarantee Rule (Rule 5); claimants did not work overtime (Rule 14); nor were they suspended from their work during regular hours (Rule 15); and they were not required to work after being released (Rule 16). The work at this station was light on this particular day, and no emergency existed. Such being the case, if the claimants had been required to work four hours beyond his regular assignment and before commencing her regular assignment, the Carrier would have subjected itself to penalty under the "Hours of Service Law". Further, the rules cited do

not support Petitioner's contention that the Carrier was prohibited from blanking a position when the incumbent failed to report for duty under the circumstances of this case.

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

That both parties to this dispute 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

The facts of record do not show a violation of the current 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 28th day of February, 1951.