

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that W. S. Link who occupies the position of agent-telegrapher at Boston Corners, New York, whose assignment on week days ends at 7:00 P. M., who was required to come out to work at 6:00 P. M., and remain on duty on May 30, 1950, Decoration Day, until 8:00 P. M., shall be paid three hours at the time and one-half rate for work performed within his regular week-day assignment and one hour overtime at the rate of time and one-half for work performed outside regular weekday assigned hours on this holiday, less any payments already received for this day.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of July 1, 1948, amended September 1, 1949, is in effect between the parties hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Boston Corners is a one-man station located on the Harlem Division, employing an agent-telegrapher whose assigned hours at the time of this claim were 7:35 A. M. to 7:00 P. M. daily except Saturdays, Sundays and holidays, with one hour for meal.

On May 24, 1950 Carrier issued Harlem Division Bulletin No. 10 to all concerned over the signature of Supt. J. C. Carkhuff. This bulletin notice among other things contained the following information and instructions:

"Boston Corners will work May 30, 6:00 P. M. to 8:00 P. M."

Accordingly, Claimant W. S. Link reported at Boston Corners station and worked the hours assigned to his position on this date.

Time claims were submitted for payment of three hours at time and one-half rate for time worked within regular assigned weekday hours from 6:00 P. M. to 7:00 P. M. and for one hour overtime payment at time and one-half for work performed outside the regular assigned weekday hours from 7:00 P. M. to 8:00 P. M., May 30, 1950. Carrier would only make payment to Claimant Link of two hours at time and one-half for work performed on this date.

POSITION OF EMPLOYES: As indicated in the Employees' Statement of Facts, Claimant W. S. Link is regularly assigned as Agent-telegrapher

CONCLUSION

The evidence herein presented conclusively shows that the claim of the Employees is not supported by any of the rules of the Telegraphers' Agreement nor by custom or practice. The claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD—There is no dispute in this case regarding the existing factual situation, and the only issue involved is—what were “the hours of the regular week day assignment” of the Claimant, within the meaning of such phrase as used in Article 11, Section 2 of the current Agreement, effective September 1, 1949.

Insofar as they are pertinent and have application to the issue under the confronting factual situation the provisions of Article II, Section 2, *supra*, read:

“Time worked within the hours of the regular weekday assignment on the following holidays, namely: * * * Decoration Day * * * shall be compensated for such service on the following bases: * * *

On five and six-day positions:

At the rate of time and one-half with a minimum of three (3) hours for each tour of duty.

Time worked outside of their regularly assigned hours shall be paid for in accordance with the call or overtime rules.”

The Claimant, Link, was regularly assigned as Agent-Telegrapher at Boston Corners. Prior to April 24, 1950 the assigned hours of his five day position at this one shift office were 8:30 A. M. to 5:35 P. M. daily, exclusive of meal time, except Saturday, Sunday and Holidays. As of the date last mentioned, the Carrier posted a notice or bulletin which, so far as his position was concerned, stated that thereafter Claimant was to work such position “7:35 A. M. to 4:35 P. M. (except Saturday, Sunday and Holidays) *4:35 to 7:00 P. M.”, the asterisk indicating the hours last described were overtime which was to be worked as shown in addition to the basic day. This notice, or bulletin, also contained a provision to the effect the hours of such position were not to be changed without permission from the Superintendent's office. It is conceded no such change had been made prior to the events giving rise to the present controversy.

On Decoration Day, May 30, 1950, a day not included in his assignment, the Carrier required Link to work from 6:00 P. M. to 8:00 P. M., for which it paid him two hours at the time and one-half rate. Subsequently, proceedings were initiated on the property which resulted in bringing the instant claim properly before this Board, based on the premise that Link should have been paid three hours at the time and one-half rate, for work performed within his regular week day assignment, and one hour overtime at the rate of time and one-half, for work performed outside regularly assigned hours.

For the obvious reason our province is not to construe other rules of the Agreement, but to determine the import to be given to the terms of the all decisive one here involved we are not disposed to labor tedious and somewhat specious arguments advanced by the Carrier regarding what is meant by—(1)—the clause “to suspend work during regular hours” as used in Article 9, the suspension of work rule,—(2)—the phrase “regular work period” to be found in Article 5, the call rule,—(3)—the term “regular working hours” as it appears in Article 4, dealing with payment of overtime,—(4)—the words “a regularly assigned employee” as they appear in Article 12, the guarantee rule, or—(5)—language describing what shall constitute a day's work under the provisions of Article 2, the basic day rule. It suffices to say that when carefully analyzed we find nothing in the foregoing articles

which limits or restricts the force and effect of the language used in Article 11 (2), supra, or is otherwise controlling of the construction to be given its terms.

The record discloses Carrier has required Claimant to work his position ten hours and twenty-five minutes, from 7:35 A. M. to 7:00 P. M. five days per week, since April 24, 1950, in conformity with the notice or bulletin heretofore mentioned and that, during that interim, it has paid him eight hours at the straight time rate and two hours and twenty-five minutes overtime. In fact, its ex parte submission reveals an express admission to the effect Claimant is regularly scheduled to work two hours and twenty-five minutes overtime continuous with his regular working hours from 4:35 P. M. to 7:00 P. M., for which service it pays him as above indicated. Notwithstanding, Carrier insists that the "regularly assigned hours of the involved positions" are from 7:35 A. M. to 4:35 P. M., or eight consecutive hours as contemplated by the Basic Day Rule, and that the involved regularly scheduled overtime hours are no part of Claimant's regularly assigned position, hence are not to be regarded as regularly assigned hours. Assuming, without deciding there is some merit to the first phase of this contention, we are unwilling to agree the second warrants any such conclusion under the confronting factual situation. Despite technical distinguishment, the fact remains Claimant, by Carrier's own assignment, was nevertheless on a regular work day of ten hours and twenty-five minutes five days per week, which the Carrier admits was regularly scheduled. That, in our opinion, within the meaning of the term as used in Article 11 (2), supra, means that on May 30, 1950, his **regular week day assignment**, regardless whether all hours thereof are to be regarded as within the hours of his regularly assigned position, was from 7:35 A. M. to 7:00 P. M., five days per week, and entitles him to compensation at the rate therein specifically prescribed, namely, time and one-half with a minimum of three hours for the time worked (one hour) within the hours of his regular weekly assignment, and time and one-half for the one hour worked outside his regularly assigned hours.

Award No. 4351, cited by the Carrier, is clearly distinguishable and does not sustain its position. There the question was whether discontinuance of a preexisting regular assignment of overtime resulted in a violation of the Agreement, and neither the rule nor the issue here involved was raised or discussed.

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 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 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 6th day of September, 1951.