

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE NEW YORK CENTRAL RAILROAD, 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

(1) The Carrier violated the provisions of the Agreement between the parties when and because it denied Telegrapher-leverman J. N. Fess, the full allowance of \$10 each work month commencing July 1, 1948, for being required to operate highway crossing gates in addition to his regular duties of handling the movement of trains at Interlocking Signal Station 40-A, Batavia, New York.

(2) In consequence of this violation the Carrier shall be required to compensate J. N. Fess the sum of \$10 each work month beginning with July 1948, and continuing each month thereafter that the improper amount is withheld, in addition to his regular rate of pay, less any amount he has already been allowed each month for protecting the highway crossing; and

(3) All other employees covered by said Agreement who have not been properly compensated for each full work month in the amount of \$10 shall receive this payment commencing July 1, 1948, in addition to their regular rate of pay, less any amount already allowed each month for protecting crossings.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing effective date of July 1, 1948, superseding all previous agreements, supplements thereto and interpretations thereof, is in effect between the parties to this dispute, as amended September 1, 1949, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Claimant J. N. Fess, at the time the cause of claim arose, was regularly assigned to the position of telegrapher-leverman at Signal Station 40-A, Batavia, New York, on the Syracuse Division, hours of service 7:00 A.M. to 3:00 P.M. six days a week. Subsequent to September 1, 1949, the position worked five days a week, with two rest days each week.

Among the duties assigned to Claimant were those of operating highway crossing gates in addition to working a busy interlocking signal station, governing the movement of trains. The operation of highway

practice of pro-rating the allowances. It would have been a simple matter for the Organization representatives to make the basis of payment a subject of negotiation with a suggested additional paragraph to cover the specific provisions they are now attempting to read into the rule.

6. The crossing allowance rule as revised effective September 1, 1949, briefly stated, provides that employes shall be allowed the **same amount** effective September 1, 1949 as they received prior to that date. This means nothing else but that where a regular employe received a pro-rata share of the crossing allowance prior to September 1, 1949 he shall receive **that same amount** effective September 1, 1949, and not the full allowance which was not the amount paid prior to that date.

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No facts or arguments have been herein presented that have not been made known to the Employes.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was regularly assigned to the position of telegrapher-leverman at Batavia, New York, 7:00 A. M. to 3:00 P. M., six days per week, with one rest day each week. Subsequent to the effective date of the 40-Hour Work Week Agreement, September 1, 1949, the position was regularly worked five days each week with two rest days each week. Claimant was assigned the work of operating highway crossing gates in addition to the work of operating the interlocking signal station at that point. The assignment of the operation of the crossing gates was proper, the question here raised going to the compensation to which claimant was entitled under controlling rules.

The controlling rules are:

"An employe required to protect crossings, either by gates, hand signals or manually operated crossing light signals, will be allowed additional compensation of \$10.00 per month." Article 15 (d), Agreement effective July 1, 1948.

"An employe required to protect crossings, either by gates, hand signals or manually operated crossing light signals, will be allowed additional compensation of \$10.00 per month, except that effective September 1, 1949, employes shall be allowed the same amount for performing such service on five (5) days per week as they formerly received for performing such service six days per week; and employes performing service on the relief days of the position shall be allowed additional proportionate amounts." Art. 15 (d), Agreement July 27, 1949, effective September 1, 1949.

We think the language used in Art. 15 (d), Agreement effective July 1, 1948, clearly means that an employe regularly employed who is required to protect crossings is entitled to additional compensation of \$10.00 per month. The additional compensation goes to the employe and not to the position. If he works each day of his assignment during the month, he is entitled to the additional \$10.00 pay under the rule. Prior to September 1, 1949, an employe assigned to work six days per week on a seven-day position was entitled to receive \$10.00 per month additional for attending crossing gates. After the advent of the 40-Hour Work Week Agreement, effective September 1, 1949, an employe regularly assigned five days per week is entitled to \$10.00 additional for attending crossing gates under Article 15 (d) as amended, effective on such date. The \$10.00 per month is subject to apportionment only with relief or extra employes required to be used on the regular assignment because of the absence of the regular occupant.

After July 1, 1948, a relief employe working on the rest days of a regular position is entitled to be compensated proportionately for protecting crossings at the rate of \$10.00 per month for the days worked. After Sep-

tember 1, 1949, a regular employe working a five-day week is entitled to the full \$10.00 per month for protecting crossings and the relief men on rest days are entitled to additional proportionate amounts. This is the clear meaning of the rules hereinbefore quoted.

Carrier insists that it has been the practice for many years to apportion the \$10.00 per month to all employes performing the work during the month. In this respect, the record shows that the applicable rule in the Agreement of May 1, 1926, provided for hourly compensation. In the Agreement of May 16, 1928, a rest day was provided for seven-day positions and it was agreed that the compensation due for crossing protection should be paid to the regular employe who would pay over a proportionate share to the relief or extra employe used. Subsequently, the Carrier made the distribution between the regular employe and the relief or extra employes used. This situation continued until the rule was changed by the Agreement effective July 1, 1948. The Carrier continued to apportion the \$10.00 monthly compensation between regular employes and relief or extra employes used on rest days. On October 1, 1948, the general chairman protested this method of advertising and paying for such work. No practice can be said to have grown up after the rule was rewritten in the Agreement of July 1, 1948. It does not appear that there was any mutual interpretation after July 1, 1948, upon which the Carrier can rely. Even if there was, it would not prevent the enforcement of the Agreement as made, although it would be a bar to retroactive reparations during the period of the mutual misinterpretation of the Agreement.

Carrier asserts that a money claim was not filed until January 13, 1949, and that all claims are barred which arose more than three months prior to that date under the provisions of Article 33 (a) of the controlling Agreement. We agree with the Carrier on this point. While correspondence took place between the Carrier and general chairman relating to the proper interpretation of Article 15 (d), no money claim was actually made until January 13, 1949. No money claims can be allowed which arose more than three months prior to January 13, 1949. An affirmative award is required.

**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 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 Agreement was violated.

#### AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of May, 1952.