

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MICHIGAN CENTRAL RAILROAD

(The New York Central Railroad Co., Lessee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Michigan Central Railroad that:

Telegrapher H. J. Butler shall be paid a "call" of three (3) hours pursuant to Rule 5, because he was notified or called to perform work not continuous with his regular work period May 1, 1951.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of May 1, 1941 as to rules and working conditions, subsequently revised and amended September 1, 1949, is in effect between the parties, herein-after referred to as the Telegraphers' Agreement.

H. J. Butler, the Claimant in this case, holds a regular assignment as first shift telegrapher at Lake Street station, Niles, Michigan, with regular assigned hours from 7:00 a.m. to 3:00 p.m. This is a three shift station with around-the-clock service 24 hours a day.

On April 30, 1951, Butler completed his regular tour of duty at 3:00 p.m., and at 10:59 p.m. on that date, while at home, he was officially notified by the Carrier to report for duty on the third shift at Niles to begin work at 3:00 a.m., May 1, 1951, because the regular employe on this third shift with assigned hours 11:00 p.m. to 7:00 a.m., would not report for work. As there were no other employes immediately available the Carrier intended to double the second shift employe over for four hours from 11:00 p.m. to 3:00 a.m., and have the first shift telegrapher (Claimant Butler) report four hours in advance of his regular assigned starting time; thus requiring Claimant Butler and the second shift telegrapher to work 12 hours each in order to cover and protect the third shift assignment at Niles, Lake Street station.

Later, however, it developed that the incumbent of the third shift telegrapher position at Lake Street reported for duty on his regular position at 12:30 A.M., thus relieving the second shift telegrapher after he had worked one and one-half hours overtime.

As soon as it was made known that the incumbent of the third shift position had reported, Claimant Butler, who had previously been notified

It is noteworthy that the payment of a call under the above quoted rule is specifically conditioned upon "two (2) hours work or less" being performed. In the instant case, the claimant was notified at his place of calling that the call to report for work at 3:00 A. M. was cancelled. He did not leave home to report for duty and he performed no work. These facts are not in dispute.

2. THAT THE CLAIM IS BASED UPON AN ERRONEOUS PREMISE.

The Employees are progressing the instant claim on the erroneous premise that the claimant is entitled to payment under Rule 5 because he suffered an interruption to his rest. There is no support for this erroneous premise either expressed or implied by the rule referred to. As previously shown under Carrier's Principal Point 1, the payment provided for therein is conditional upon work being performed and no work was performed in the instant case.

It is evident from the facts and circumstances described above that the situation at Niles, on the night of April 30, 1951, was brought about by man failure and nothing else. The third trick telegrapher who was supposed to report for duty at 11 P. M. chose for reasons of his own to reside at Michigan City instead of Niles. It was his responsibility to get to his place of employment at the designated reporting time. He is a fellow employe of claimant Butler, but apparently the latter resented having his rest disturbed by two interruptions which were brought about entirely by the failure of the fellow employe to report when he was supposed to be there.

In conclusion, the Carrier has shown that the instant claim is not supported by the rules or practice and, consequently, should be denied.

All of the data incorporated herein have been presented to the Employees.

OPINION OF BOARD: Claimant, H. J. Butler, is a regularly assigned telegrapher at the Lake Street Station in Niles, Michigan, with hours from 7:00 A. M. to 3:00 P. M. This is an around-the-clock position.

On April 30, 1951, at 10:50 P. M. the Claimant was notified that the telegrapher with assigned hours from 11:00 P. M. to 7:00 A. M. could not report for work and Claimant should report for work at 3:00 A. M. May 1, 1951.

At 12:30 A. M. May 1, 1951, the regular telegrapher reported for work and the Carrier immediately called the Claimant and cancelled the call for 3:00 A. M. notifying him to report for his regular assignment at 7:00 A. M.

H. J. Butler contends he is entitled to the minimum under Rule 5 of the Agreement. Rule 5 provides:

"Except as provided in Rules 10½ and 11, employes notified to perform service not continuous with the regular work period will be allowed a minimum of 2 hours at time and one-half for 2 hours' work or less, and if held on duty in excess of 2 hours, time and one-half will be allowed on the minute basis."

A similar rule was interpreted during Federal Control in Supplement No. 13 to General Order No. 27 as follows:

"Question 19.—What is the intent of the term 'notified or called to work outside of established hours' as to service on week days?"

"Decision—If an employe is released from duty and is notified or called to and does report for duty, such employe shall be paid not less than the minimum provided for in Section (c), Article V."

This interpretation required that the employe had to report for duty before being entitled to the minimum under the Rule. The same interpretation must be given to Rule 5. If the employe is notified to perform service not continuous with his regular work and the notification is not cancelled before he leaves home, then he is entitled to the minimum, but in the instant case the Claimant was notified two and one-half hours before his reporting time that he was not to report to perform service, therefore, he is not entitled to the minimum call.

That part of the interpretation, "* * * and does report for duty, * * *" applies to that part of Rule 5 which says, "* * * will be allowed a minimum of 2 hours at time and one-half for 2 hours' work or less, * * *" (our emphasis). In other words, this Rule says a man must report for work to be paid. The minute he reports he comes within Rule 5.

It is unquestioned that the employe was inconvenienced, but the Rule is definite. It does not pay for this type of inconvenience. It would be necessary to negotiate a rule to cover the situation as here presented.

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

That the 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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 7th day of August, 1952.