

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad Company, debtor, Guy A. Thompson, Trustee; that

- (1) the Carrier violated the terms of the Agreement between the parties when it deducted from pay draft for period December 1st to 15th, 1950, the sum of \$61.15 then and there due H. Stermer, regularly assigned Telegrapher at Lake Charles, Louisiana; and
- (2) Carrier shall pay to H. Stermer the sum of \$61.15 improperly deducted from his pay draft.

EMPLOYEES' STATEMENT OF FACTS: At Lake Charles, Louisiana, Carrier has a telegraph office, in which, two telegraphers are regularly assigned. The first shift hours being 6:00 A. M. to 2:00 P. M. and second shift 3:00 P. M. to 11:00 P. M. There is no one on duty from 2:00 P. M. to 3:00 P. M. and from 11:00 P. M. to 6:00 A. M.

H. Stermer was and is the telegrapher regularly assigned to the first shift. Immediately prior to October 15, 1950, Stermer had been on leave of absence account illness. On this date, which was on Sunday, he reported for duty in the manner prescribed by Carrier, effective 6:00 A. M., Monday, October 16, 1950.

About 9:30 P. M. October 15, 1950, the same day he reported but the day before he was to begin work on his regular assignment, he was called at home by Carrier's Assistant Trainmaster Fenner and told to report for duty at 11:00 P. M. outside of his regular assignment. Stermer reported as directed and talked with Carrier's Night Chief Dispatcher, Houston, telling him that he had reported for duty on the 6:00 A. M. (October 16th) shift and asked to be relieved of the call, but was told to work and did so. He continued to work the 11:00 P. M. to 7:00 A. M. shift daily through October 21st, which closed at 7:00 A. M. on the 21st.

Each day Stermer filed overtime slips claiming a call and overtime as well as pro rata time for his regular assignment from which he was suspended. These overtime slips were honored and paid by Carrier, without objection.

However, on the first half of December, 1950, pay draft, the sum of \$61.15, was deducted from pay for services during that period. Carrier claimed that there had been an overpayment to Stermer, for second half of October, 1950, in this amount.

It is the position of the Carrier that this temporary assignment of the claimant to a position other than his regular position did not, in any way, violate any provision of the Agreement; and that if it is held that Rule 10 (e) was violated, no additional payment is due because the claimant has already been paid more than if he had worked his regular assignment on the dates involved in his claims.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimant herein requests repayment of the sum of \$61.15 deducted by the Carrier from his pay for the period December 1 to 15, 1950. The Carrier made the deduction because of an alleged overpayment in overtime claimed for the second pay period in October. The Carrier contends that Claimant "did not work any overtime on any of the claim dates". Claimant did submit time slips claiming overtime for October 16, 17, 18 and 21, 1950, the days involved in this dispute. The overtime at the rate of \$2.393 per hour was claimed on the basis of the allegation that work was performed outside the hours of Claimant's regular assignment.

As to the allowance of overtime claimed by employees, Rule 10 (f) of the Agreement provides:

"Overtime will not be allowed unless overtime tickets are mailed to proper official within 24 hours from time service is performed. If overtime claimed is not allowed the employee (claimant) will be notified within ten days from time such service is performed."
(Emphasis added).

Rule 10 (f) is clear and unequivocal. Under the Rule overtime will not be allowed, even though rightfully earned under the Agreement, unless the employee submits an overtime ticket to the proper official of the Carrier within 24 hours from the time the service was performed. The Record shows that Claimant did submit overtime tickets within the specified time, and the tickets indicated the basis on which overtime was claimed. Thus, the Carrier received the type of notice due it under Rule 10 (f). But this Rule requires the Carrier, also, to give notice; at least it requires the Carrier to give notice if it wishes to challenge a claim for overtime. The Rule literally provides that "If overtime claimed is not allowed the employee (claimant) will be notified within ten days from time such service is performed." The Carrier did not notify Claimant within the required time that the overtime claimed by him had been disallowed. Indeed, the Carrier paid Claimant for all the overtime claimed in the tickets submitted by Claimant, and did not approach Claimant in any manner about the matter for about six weeks, at which time the Carrier deducted the alleged overpayment from one of Claimant's December checks.

Rule 10 (f) is in the nature of a bar—something of a statute of limitations—affecting the rights of both the Employee and the Carrier. It imposes a duty, and a right, upon each. The duty imposed upon the Employee gives the Carrier the correlative right to a prompt claim for overtime; the duty imposed upon the Carrier gives the Employee the correlative right to a prompt approval or rejection. The parties in adopting Rule 10 (f) simply recognized that what is fair for one is fair for the other.

In view of the Carrier's failure to disallow the claimed overtime within the ten-day period specified by Rule 10 (f), the merit or lack of merit of its contention that the overtime claimed in Claimant's tickets was not actually due him under the Agreement becomes immaterial. In the absence of fraud or other wrongdoing on the part of the employee, the Carrier's failure to give timely notice of disallowance as required by Rule 10 (f) estops it from later denying that the claimed overtime was due the employee. Accordingly, the question whether the alleged overpayment was in fact an overpayment under the Agreement need not be decided here, and it is concluded that the Carrier must pay Claimant the sum of \$61.15.

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 Employee involved in this dispute are respectively Carrier and Employee 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 in deducting the sum of \$61.15 from Claimant H. Stermer's check in December, 1950.

AWARD

Claims sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1953.