

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

- (1) The Carrier violated the terms of the agreement between the parties when it failed to call C. P. Mulligan and J. C. Carroll, the regular occupants of the second shift positions at Seymour and Naugatuck, Connecticut, respectively, on Saturday, November 25, 1950, one of the assigned rest days of respective claimants, to perform service embraced by and falling within the hours of their assignments.
- (2) C. P. Mulligan and J. C. Carroll, who were available but not used to perform the required service on Saturday, November 25, 1950, shall be compensated on the basis of 8 hours at the time and one-half rate of pay for that day.

EMPLOYES' STATEMENT OF FACTS: An agreement, referred to herein as the Telegraphers' Agreement, bearing effective date of June 15, 1947, revised September 1, 1949, as to rates of pay and working conditions is in effect between the parties to this dispute.

The Claimants, C. P. Mulligan and J. C. Carroll, were regularly assigned Operator-Clerks at Carrier's passenger stations at Seymour and Naugatuck, Connecticut respectively. C. P. Mulligan was employed at Seymour with assigned hours; 2:45 P.M. to 10:45 P.M. Monday through Friday and J. C. Carroll was employed at Naugatuck, Connecticut, with assigned hours: 2:40 P.M. to 10:40 P.M., Monday through Friday. Saturday and Sunday are the rest days for both positions.

On Saturday, November 25, 1950, it became necessary to open Seymour and Naugatuck, normally closed on this day of the week, as block stations, to handle train movements. Seymour was open for this purpose at 5:15 P.M., Naugatuck at 5:10 P.M. Each of these stations remained open for eight hours, during which service was performed by the employees called by the Carrier. The hours for which the employees were called to perform this service are within the regularly assigned hours of the claimants.

automobile travel and as to the absence of specific information permitting any advance planning. The radio log contains the following entries:

"2:24 P.M.—Power lines down on Rt. 8, Seymour.

4:54 P.M.—Tree down in front of Paradise Inn, Rt. 8, Seymour.

8:54 P.M.—Traffic tieup—Route No. 8.

10:01 P.M.—Tree down, Route 115, Seymour."

The station log is brief but informative:

"So many calls came in all could not be recorded.

5:05 P.M.—Branches down, Route 8, Seymour, road blocked."

It may well be that an examination of routes and streets subsequent to the storm would indicate that there was a route open over the network of highways in the area which, had it been known at the time, would have permitted the two men claiming compensation to have reached the stations in time. Again, however, any such reconstruction must assume the premise that there was time and information available either for the dispatcher or for the men involved to deliberately plan out a route which would have brought them to the posts to be covered. In the violence of a winter storm any such test of availability would ignore the practicalities of such a situation.

CONCLUSION

Carrier respectfully submits the claim is without merit and should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claim is made by the Organization on behalf of employees named, for a day's pay at the time and one-half rate for failure of the Carrier, to call said employees to perform work on one of the rest days of their respective positions, all in violation of provisions of Article 13 of the current Agreement between the parties.

Carrier contends that because of a severe storm throughout the area in the day in question, and because of an emergency beyond the control of Carrier, brought about by the severity of the storm, it became necessary for Carrier to operate stations at Naugatuck and Seymour, Conn., and because no extra men were available, it required the services of the two first trick operators at the named stations to perform the necessary work, and did not call the claimants due to the emergency conditions.

There is no dispute in the record that the two claimants were the regularly assigned second trick operators, Monday through Friday, at Naugatuck and Seymour, with rest days on Saturday and Sunday. Nor is there any dispute that the two named stations were normally closed on Saturdays and Sundays, there being no operations required on such days by Carrier.

Claim arises, by failure of Carrier to call the two second trick operators to work their positions on Saturday, November 25, 1950, due to severe and violent storm conditions which disrupted traffic through the New York City and portions of New England area, where Carrier operated its trains. Due to the disruption of much of its electrically operated lines, it became necessary for Carrier to change schedules, and apply diesel power, and also to operate trains over the trackage through Naugatuck and Seymour. That because of such operations and train movements, it became necessary for Carrier to call operators to open the stations at Naugatuck and Seymour.

The record clearly shows the two stations were open between 5:10 P. M. and closed at 1:10 A. M. The record further shows without denial that Carrier called the two regularly assigned first trick operators to work the two positions, and that neither of the two regularly assigned second trick operators were called, since the two first trick employees lived in Naugatuck and Seymour, where their services were required. Carrier admits that at 2:30 P. M. on the day in question it became necessary to order two diesels to leave Waterbury for service in electrified territory, and that at 4:30 P. M., it decided operators were necessary to be used at the two locations and that Carrier did call the two first trick operators for the assignment. Nor is there any denial in the record that Carrier made any effort to call or contact in any way the two claimants for the assignment.

Claimant Carroll, the regularly assigned second trick operator at Naugatuck, resides at Ansonia, a distance of 11.3 miles from Naugatuck, while Operator Mulligan, resided at Derby, a distance of 5.8 miles from Seymour, and both had privately owned automobiles, which would have been available to take them to their relative positions had they been called by Carrier.

This Board has no doubt as to the great damage and havoc, brought about by this severe storm, and that Carrier's operations were greatly disrupted, but it is the opinion of the Board, that Carrier had ample knowledge of the weather forecasts, and the possibility of the continued severity of the weather, and that by its own admissions it began the preparations for operation of diesels over its electric lines as early as 2:30 P. M., and that it was not until 4:30 P. M. of the day in question that Carrier made its decision to open the two involved stations, and that in any event the two second trick operators, who were entitled to the assignment could have been called in ample time to take the assignment. Even had Carrier called them at 4:30 P. M., they would still have had ample time to have arrived at their positions in the forty minutes allowed. But Carrier made no effort to call the employees. Claimants concede that had Carrier called them, or made any effort to reach them, and they failed for any reason to take the assignment, there would be no basis whatever for these claims. The record is clear that there were no available extra or unassigned employees, who may have been called, and in such case, the regular employee is entitled to the work.

Article 13—Extra Work, Extra List, Etc., states as follows, in Section (d):

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an extra employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

We hold that Carrier has violated the provisions of Article 13 (d) of the Agreement, by its failure to call the claimants, as alleged, since it had sufficient knowledge of the severity of the impending and approaching storm by weather observations and reports, as shown in the record, and has shown no justification for its action by management, by its failure to call the employees, and no emergency existed to justify the violation as claimed by the Organization.

Since we have found Carrier violated the Agreement, we now must determine the proper rate of compensation the claimants are entitled to. Carrier contends if the claim is sustained, the proper rate would be the pro rata rate. The Organization contends for the penalty rate of one and one-half times the pro rata rate. Had the employees worked the positions they claim, their proper rate would have been at one and one-half times the pro rata rate. This board has on numerous occasions held that where the work has been performed, as is not the case here, the proper rate is one and one-half times the pro rata rate. But where the employee is entitled to a sustaining award without performing the actual work, the proper rate is what the employee would earn at the straight time or pro rata rate. Since the work claimed

in this case was not performed, we must reaffirm the many cases on this subject, and hold that claimants should be entitled to the pro rata rate of pay. See Awards 4244, 4728, 4815, 4817, 5177.

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 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 Carrier has violated the Agreement as alleged, and claim should be sustained.

AWARD

Claim (1) sustained.

Claim (2) sustained, except employees are only entitled to pay at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.