Award No. 6773
Docket No. TE-6709

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad Company that:

> Block Operator H. C. Rhoades, regularly assigned to relief schedule No. 5, involving positions at 'Drocton-Drury', who was held off first shift Drocton on August 28, 1949 and was required to perform service on second shift 'Drury' on August 28 and 29, 1948, shall be compensated in accordance with provisions of Article V, Sections IV (c) and V of the applicable agreement in addition to compensation received by the claimant for service rendered on those dates.

EMPLOYES' STATEMENT OF FACTS: Claimant H. C. Rhoades held regular assignment, Relief Schedule No. 5 covering "Drocton-Drury" Towers, Renovo, Penna., and was scheduled to work first shift "Drocton" on August 28 and first trick "Drury" on August 29, 1948.

At 6:30 A. M. August 28, he was notified to disregard his schedule and work second shift "Drury" on these dates.

Regular incumbent second shift "Drury" Tower was on vacation and was being relieved by an extra employe, the extra employe reported off sick and unable to work on August 28, and it is alleged that no extra employe was available to fill the position on the dates involved.

POSITION OF EMPLOYES: The governing agreement between the parties as to regulations and rates of pay became effective May 16, 1943. (Regulations since revised effective September 1, 1949, rates of pay February 1, 1951.) The Telegraphers Agreement of May 16, 1943, is divided into two parts: Part 1 governs Agents and Assistant Agents, while Part 2 governs Telegraph Department employes. Part 2 governs in the present case and the following regulations are invoked in support of claim as filed.

ARTICLE V SECTION 1.

> "Except as otherwise provided in Section 12 of this Article (V) eight (8) consecutive hours, exclusive of meal hour, shall constitute a days work at offices where only one shift is worked. At offices where more than one shift is worked, eight (8) consecutive hours with no allowance for meals shall constitute a days work."

CONCLUSION

The Carrier has established that under the applicable Agreement the Claimant is only entitled to be compensated at the pro rata rate of pay for the number of hours comprising his regular assignment which he did not work on August 28 and 29, 1948, in accordance with the provisions of Article V, Section 5 of the applicable Agreement, and that, on the other hand, there is no rule of Agreement providing for payment of the additional compensation of eight hours at the rate of time and one-half instead of the pro rata rate for the service he performed on other than his regular assignment, August 28 and 29, 1948, as claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned relief operator, with an hourly rate of $1.3325. On Saturdays his assignment was to work the first trick at Drocton from 7:59 A.M. to 3:59 P.M., and on Sundays the first trick at Drury for like hours. The established rate of the regular occupant of the Drocton position was $1.285 and at Drury $1.36 per hour.

On Saturday, August 28 and Sunday, August 29, 1948, Claimant was held off his regular assignment and used to fill a vacancy on the second trick at Drury from 3:59 P.M. to 11:59 P.M., on account of the regular occupant of that position being ill.

Claimant demands punitive pay for the hours actually worked, calculated on the basis of the established rate of that position for the regular occupant thereof at time and one-half, and also for a day at the pro rata rate for his regular assignment from which he was withheld, for each of said days.

The Carrier has offered to compensate the Claimant at the pro rata rate of his regular assignment, not worked, and at the established pro rata rate of the position actually worked; and the only issue before us is whether he is entitled to be compensated at the punitive rate of the position actually worked.

Section 12, of Article V, of Part II of the applicable Agreement provides:

> "A regularly assigned employe who is required to work temporarily in a position other than his regular position shall be paid at the rate of the position to which he is temporarily assigned, but, if such rate is less than the rate of his regular position, he shall be paid at the rate of his regular position."

The above rule is special in character and prevails over the general basic day, overtime and call rules of the Agreement, in those instances where, by its terms, the special rule is applicable. See Award 6737.

The Organization also urges past practices as justifying punitive pay for the time actually worked, but we are of the opinion that past practices can have no proper application to such a demand. In Award 4534 this Board said:

> "The Organization contends that the Carrier has settled numerous claims of a similar nature at the overtime rate of time and one-half. It is asserted that this constitutes a practice which is binding upon the Carrier. We think not. Rates of pay, including penalty

rates, are determinable from the contract. It could not be said that an employe paid less than the contract rate of his position over a period of time, could not recover the deficiency because a practice had been created. The Agreement is superior to a practice. Neither can the Carrier be restrained from correcting an erroneous application of rates of pay, including penalty rates, on the theory that a practice had arisen. Compensation for work is contractual and therefore superior to any alleged practice."

It is our conclusion that the Carrier correctly construed its obligation to the Claimant.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1954.