

Award No. 6971
Docket No. TE-6862

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)**

STATEMENT OF CLAIM: Claims of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Line West of Buffalo) that:

CASE NO. 1

1. Carrier violated the Agreement between the parties hereto, when it failed and refused to pay R. E. Cavin at the rate of time and one-half for eight hours' service performed on the 15th and 16th of September, 1952, at West Columbus, Ohio.

2. Carrier shall compensate R. E. Cavin for the difference between the straight time rate paid and the time and one-half rate for such services performed as aforesaid.

3. Carrier further violated the Agreement, when on the 15th and 16th of September, 1952, it failed to use extra employe K. J. McKinley to perform services at West Columbus, Ohio, on the third shift, instead of R. E. Cavin.

4. Carrier shall compensate K. J. McKinley, at the straight time rate, for eight hours on September 15, and for eight hours on September 16, 1952, at the rate of pay applicable to third shift position West Columbus, Ohio.

CASE NO. 2

1. Carrier violated the Agreement between the parties hereto when on the 12th day of January 1953, it failed to use extra employe E. G. Atkins to perform services third shift (11:00 P. M. to 7:00 A. M.) at Nitro, West Virginia, instead of extra employe R. J. Williams.

2. Carrier shall compensate E. G. Atkins, at the straight time rate, for eight hours on January 12, 1953, at the rate applicable to third shift Nitro, West Virginia. (\$14.63.)

3. Carrier shall in addition thereto compensate E. G. Atkins, in the sum of 98 cents for deadhead time from Charleston, West Virginia, to Nitro and return, a distance of 16 miles, at the rate of .03048¢ per minute for 32 minutes.

CASE NO. 3

1. Carrier violated the Agreement between the parties hereto, when on the 31st day of December 1952, it failed to use extra employe R. N. Burdette to perform services on third shift "BK" Office instead of operator R. J. Williams.

2. Carrier shall compensate R. N. Burdette at the straight time rate for eight hours on December 31, 1952, at the rate applicable to third shift "BK" Office. (\$14.76.)

3. Carrier shall in addition thereto compensate R. N. Burdette in the sum of \$9.96 for deadhead time from Leon, West Virginia, to "BK" and return, a distance of 162 miles, at the rate of .0375¢ per minute for 324 minutes.

EMPLOYES' STATEMENT OF FACTS:

CASE NO. 1

K. J. McKinley and R. E. Cavin were at all times hereinafter mentioned, extra employes covered by the Telegraphers' Agreement.

Cavin was, on September 3, 1952, assigned by Carrier to second shift Kile, for the purpose of relieving Mrs. F. M. Runyon for her vacation. He filled this assignment from September 3 to 14 inclusive. The rest days of this assignment are Mondays and Tuesdays. The assignment at Kile included the following days and dates:

Wednesday	September 3, 1952	(Second Shift)
Thursday	" 4, 1952	" "
Friday	" 5, 1952	" "
Saturday	" 6, 1952	" "
Sunday	" 7, 1952	" "
Monday	Rest Day (8th)	
Tuesday	Rest Day (9th)	
Wednesday	September 10, 1952	" "
Thursday	" 11, 1952	" "
Friday	" 12, 1952	" "
Saturday	" 13, 1952	" "
Sunday	" 14, 1952	" "
Monday	Rest Day (15th)	(actually worked West Columbus third shift)
Tuesday	Rest Day (16th)	(actually worked West Columbus third shift)

McKinley was idle on September 12, 13, 14, 15, 16, 1952. His last work was on September 7, 8, 9, 10 and 11. He was available for service and was not used to fill the third shift at West Columbus on September 15 (Monday) and September 16 (Tuesday), although entitled to the work.

CASE NO. 2

R. J. Williams and E. G. Atkins are extra employes. On January 6, 1953, Williams was assigned to work, and did work at Fultonham, Ohio, as follows:

3. Rules cited by the Organization not only do not support the claims but, when associated with other rules and, particularly, with the September 27, 1950 Memorandum of Understanding effective November 1, 1950, **actually refute** the claims;
4. Board Awards involving work performed by extra operators on other railroads which do not have rules and understandings in effect analogous to those applicable on this property do not have any precedent value in this docket;
5. The claims are built up on untenable premises wholly at variance with existing rules and understandings and should be denied.

All evidence and data set forth in this dispute have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: In case No. 1 of this claim, it appears that Claimant Cavin worked a regular assignment in relief of the occupant of the position. The assignment was Wednesday through Sunday, with Monday and Tuesday as rest days. Claimant worked Wednesday, September 10, 1952, through Sunday, September 14, 1952. Having worked 40 hours in the work week being relieved, the Monday and Tuesday following were claimant's rest days. Claimant having been assigned to work September 15 and 16, 1952, his rest days, he is entitled to be paid at the time and one-half rate.

When an extra employe takes the assignment of a regular employe, he assumes the conditions of that assignment. He takes the work week of the occupant and the rest days incidental thereto. Article 10, Section 1(h) current Agreement. When he works 40 hours in the work week of the position assumed, he is entitled to the rest days thereof. If he works on his rest days, he is entitled to be paid for rest day work. The senior extra employe cannot claim extra work in excess of forty hours in his work week as against an available junior extra employe who has had less than 40 hours' work in his work week. Article 21 (b), current Agreement. The rules applicable are more fully discussed in Award 6970. They apply to the factual situation existing in the present case and control its result. Claimant Cavin is entitled to be paid the time and one-half rate for his work on September 15 and 16, 1952.

Claims 3 and 4 of Case 1 should also be sustained. R. E. Cavin was not entitled to the work as against Claimant McKinley under Article 21 (b), the latter not having worked 40 hours in his work week.

In Case 2, Claimant Atkins was entitled to work the position in question January 12, 1953, for the reasons hereinbefore set out. In Case 3, Claimant Burdette was likewise entitled to work the position in question on December 31, 1952.

We do not think that the claims for deadhead time contained in Cases 2 and 3 are valid. This time allowance under Article 14 (a), computed on the basis of two minutes for each mile is in the nature of expense for driving an automobile. Claimants not having earned such an expense item, they not having driven their automobiles, they have no basis for claim on these items. In any event one day's pay provides an adequate penalty for the violation.

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 the Agreement was violated.

AWARD

Claims in Case 1 sustained. Claims 1 and 2 in Case 2 sustained; Claim 3 denied. Claims 1 and 2 in Case 3 sustained; Claim 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of April, 1955.