

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

(1) The Carrier violated the terms of the agreement between the parties, when it failed to call P. E. Jeter, third telegrapher-clerk, Likely, California, for service on Wednesday and Thursday, June 28 and 29, 1950; and

(2) In consequence of such violation the Carrier shall now compensate P. E. Jeter for 8 hours at the time and one-half rate for work denied on June 28 and 29, 1950.

EMPLOYES' STATEMENT OF FACTS: There is now, and has been at all times, in full force and effect a collective bargaining agreement between the parties, hereinafter referred to as the Telegraphers' Agreement. The agreement bears the date of December 1, 1944 (reprinted March 1, 1951), including revisions. Copies of this agreement and amendments are on file with this Board and are, by reference, included in this submission the same as though set out word for word.

The dispute involves interpretation of the agreement and was handled on the property as prescribed by the Railway Labor Act, as amended, and in accordance with the usual handling of grievances. The claim was denied by the Carrier following a decision of the top ranking official of the Carrier and is now properly submitted to your Board for adjudication.

The claimant involved in this dispute, Mr. P. E. Jeter, was regularly assigned to third shift at Likely, California with the classification of telegrapher-clerk. This station is located at Milepost 438.7 on the Alturas Subdivision of the Salt Lake Division of the Carrier. The station forces at Likely are as follows:

1. Agent-telegrapher, assigned hours 8:00 A. M. to 4:00 P. M. Rest days Saturday and Sunday, the position being relieved by a rest day relief man on these days each week.
2. Second telegrapher-clerk, assigned hours 4:00 P. M. to 12:00 midnight. Rest days Monday and Tuesday, the position being relieved by a rest day relief man on these days each week.

and one-half with a minimum of eight (8) hours, whether the required service is on their regular positions or on other work.

"2. Employees, other than those covered by Section (c) 1, above, shall be paid

(a) On Sunday, a minimum allowance of three (3) hours at the overtime rate for three (3) hours' work or less and at the overtime rate for all time worked after the third hour of each tour of duty.

(b) On the rest day other than Sunday, a minimum allowance of two (2) hours at the overtime rate for two (2) hours' work or less and at the overtime rate for all time worked after the second hour of each tour of duty.

"3. Time worked before or after the limits of the limits of the regular week day assignment shall be paid for in accordance with the overtime provisions of Rule 14 or the call provisions of Rule 16.

"4. Service rendered by an employee on his assigned rest day or days filling an assignment which is required to be worked or paid eight (8) hours on such day will be paid for at the overtime rate with a minimum of eight (8) hours."

Since the claimant performed no service on dates involved in this claim (claimant's assigned rest days) Rule 7(c) is of no value to the petitioner. Furthermore, even if petitioner's position in this case were to be sustained (carrier asserts there is no basis for sustaining that position) there still would be no valid basis for payment of time and one-half rate. Insofar as the overtime rate is concerned, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division—one of the latest being Award No. 6750 on this property.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and, therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On a position that is manned only 5 days of the work-week, work was required by Carrier on claimant's position during his assigned rest days within regular hours of his assignment.

It is readily apparent, therefore, that Rule 3 prescribes the manner in which the extra work should have been assigned and since no extra or unassigned employee, who otherwise would not have had 40 hours of work that week, was available, it is obvious that claimant was entitled to perform the work of his assignment.

A rule violation being clearly in evidence Carrier urges only the special defenses of (1) laches; (2) claimant was not available; and, (3) reparations awarded, if any, should be pro rata.

On the basis of the record special defenses (1) and (2) are overruled and (3) sustained.

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 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 Agreement was violated.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1957.