

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul N. Guthrie, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY (Coast Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System, that:

1. The Carrier violated the Agreement between the parties when it failed and refused to allow R. J. Lindmeier pro rata payment for holiday September 6, 1954; and
2. The Carrier shall now be required to compensate R. J. Lindmeier for eight hours at the pro rata hourly rate applicable to the position of Agent-telegrapher at Fallbrook, California, on said date.

**EMPLOYES' STATEMENT OF FACTS:** Agreements between the parties bearing effective dates of June 1, 1951 and August 21, 1954 are in evidence.

The dispute herein set forth has been handled in the usual manner to the highest officer designated by the Carrier to handle such disputes in accordance with the Railway Labor Act, as amended, and the current agreement. The Carrier has refused to adjust the dispute on the property. This Division of the National Railroad Adjustment Board has jurisdiction of the parties and the subject matter as provided in the Railway Labor Act, as amended.

The regular incumbent of the agent-telegrapher position at Fallbrook, California, was absent from July 27 to September 20, 1954. Extra telegrapher R. J. Lindmeier was assigned to the temporary vacancy on the agent-telegrapher position at Fallbrook in accordance with the terms of the agreement and occupied the position until September 20, 1954.

The position of agent-telegrapher at Fallbrook, California, is assigned to a work week Monday through Friday with Saturday and Sunday as rest days. Claimant R. J. Lindmeier worked exactly the same number of hours, had the same work days and observed the same rest days as the regular incumbent had the latter not been absent.

September 6, 1954, (Labor Day), a recognized holiday in the Agreement, was not worked by Claimant. He was not paid for the day. This claim arose

(Exhibits not reproduced.)

**OPINION OF BOARD:** In this case claim is made for holiday pay for Labor Day, September 6, 1954, on behalf of extra telegrapher R. J. Lindmeier. The Claimant employe filed a temporary vacancy on the position in question from July 27 to September 20, 1954.

Petitioner contends that Claimant Lindmeier was entitled to pay for September 6, 1954 at pro rata rate by the provisions of Article II, Section 1, and Section 3, of the National Agreement of August 21, 1954, along with the provisions of Article X, Section 2-b of Collective agreement between the parties.

The respondent Carrier takes the position that since Claimant was not a "regularly assigned hourly and daily rated employe", but was admittedly an extra employe, he did not qualify for holiday pay under the terms of Article II, Section 1 of the cited National Agreement.

A review of the record and the applicable rules leads to the firm conclusion that he was not a "regularly assigned" employe during this period as contemplated by the language of the Agreement. Hence, there is no basis on which the claim can be sustained since, being an extra employe, he did not qualify as a regularly assigned employe. The terms of Article II, Section 3 cannot make him eligible for such pay if he does not meet the requirements of Article II, Section 1. Neither does Article X, Section 2-b of the Collective agreement support the claim.

A very similar claim involving these same parties, and involving the same agreement provisions, was decided by this Division in Award 7979. Numerous other awards by the Second and Third Divisions have disposed of a number of cases involving the same issue as the instant case. Where circumstances and rules were basically the same as those in the instant case, these awards have denied the claims. See Third Division Awards 7430, 7431, 7432, 7978, 7979, 7980 and 7982; Second Division Awards 2052, 2169, 2297 among others.

We find no basis on which to reach a different conclusion on the confronting issue from that reached in the above cited awards. Therefore, the claim will be denied.

**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 the 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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1957.