

Award No. 8139
Docket No. TE-7684

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

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 that:

(1) Carrier violated the terms of the Agreement between the parties when, beginning on Monday, December 4, 1951, one of the rest days of the telegrapher-clerk, and continuing each Monday thereafter, it required a combination of the work of the position of agent-telegrapher with that of telegrapher-clerk, at Inglewood, California.

(2) Carrier shall pay the senior idle extra employe on the district involved an amount equivalent to eight (8) hours at the straight time rate for each Monday, beginning Monday, December 4, 1951, that the occupant of the agent-telegrapher position at Inglewood, California, is required to perform the work of and act as rest-day relief employe in filling the telegrapher-clerk's position at that point. If there be no such idle extra telegrapher on any of the Mondays involved, the Carrier shall pay the regular occupant of the telegrapher-clerk's position, an amount equivalent to eight (8) hours at the time and one-half rate because he was not used in preference to an employe (agent-telegrapher) who holds an assignment to another separate and distinct position, to fill said position on each of the Mondays aforesaid.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

The Carrier maintains a station at Inglewood, California, at which, prior to December 5, 1951, there were assigned two employes covered by the Telegraphers' Agreement, as follows:

Agent-Telegrapher 8:00 A. M. to 4:00 P. M. Rest days, Saturday-Sunday

Telegrapher-Clerk 2:00 P. M. to 10:00 P. M. Rest days, Saturday-Sunday

Likewise, without prejudice to or receding from its position, as previously set forth herein, that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules, and should be denied on the basis of Awards 6946, 6947 and 6948, the Carrier further asserts that the Employees' claim for eight (8) hours at penalty time and one-half rates in behalf of the telegrapher-clerk on Mondays account not used on such days is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

* * * * *

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case is a companion case to that involved in Award 8186. The Agent-Telegrapher and the Telegrapher-Clerk involved herein are both covered by the Telegrapher Agreement and hold common seniority in the same seniority district. For the reasons stated in the aforementioned Award the Claim herein must 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.