

Award No. 11454

Docket No. TE-10245

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that:

1. Carrier violated the Agreement when it failed or refused to properly pay Angelo Pronti for work performed as Towerman-Telegrapher at Manchester Tower, 11:59 P.M. to 7:59 A.M., Tuesday, January 1, 1957.

2. Carrier shall compensate Angelo Pronti for 16 hours at time and one-half the hourly rate of the Manchester Towerman-Telegrapher position for services performed at Manchester Tower, Tuesday, January 1, 1957, less compensation previously allowed him for services performed on that day.

3. Carrier is in violation of the Agreement since it failed or refused to properly pay Z. I. Church for work performed as Clerk-Telegrapher at Auburn, New York, 2:30 P.M. to 10:30 P.M., Thursday, November 22, 1956.

4. Carrier shall compensate Z. I. Church for 16 hours at time and one-half the rate of the Auburn Clerk-Telegrapher position for services performed at Auburn on Thursday, November 22, 1956, less compensation previously allowed him for services performed on that day.

5. Carrier violated the Agreement when it failed or refused to properly pay H. F. Shumway for work performed as Telegrapher at Suspension Bridge, New York, 7:59 A.M. to 3:59 P.M., Tuesday, December 25, 1956.

6. Carrier shall compensate H. F. Shumway for 16 hours at time and one-half the rate of the Suspension Bridge Telegrapher position for services performed at Suspension Bridge, 7:59 A.M. to 3:59 P.M., Tuesday, December 25, 1956, less compensation previously allowed him for services performed on that day.

OPINION OF BOARD: The issues arising from the claim have been resolved and settled by our recent Awards 10541 and 10679—which are precisely in point.

We do not believe that said Awards, which allow the type of claim made herein, are palpably erroneous.

Therefore, this claim must be approved.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 27th day of May 1963.

CARRIER MEMBERS' DISSENT TO AWARD NO. 11454 DOCKET NO. TE-10245

For the same reasons that are fully and specifically enunciated in the dissent to Award 10541, Docket TE-9409, we dissent to this Award.

G. C. White

P. C. Carter

W. H. Castle

D. S. Dugan

T. F. Strunck

LABOR MEMBER'S REPLY TO DISSENT, AWARD 11454 DOCKET TE-10245

Since it appears that the dissenters are still not content to accept the unanimous opinion of all the referees who have considered the subject matter

involved, I believe a few comments here might serve to put the matter in its proper perspective.

The dissenters have adopted, by reference, the dissent to Award 10541, so it is necessary to look to that document for the real reason for their vexation.

That dissent is based on two main notions: (1) That the majority erred when it rejected the "overtime on overtime" argument; and (2) that the agreement does not require "double penalties for coincidental happenings."

First. The "overtime on overtime" argument was properly rejected because the rule that contains this provision was not involved in any way with the claim. That provision simply directs that in computing weekly overtime any daily overtime, that is, work in excess of eight hours on any day, will not be included. For example, if there were no such provision an employe who had worked ten hours on each of the first four work days of his work week would be entitled to the overtime rate for his entire fifth work day. That would be "overtime on overtime," and is prohibited by the rule. And that is all it does.

The claim here is not for "overtime" at all, but even if it were it would not be "on overtime," because no overtime was worked by the claimants in what would have been the base period for computing weekly overtime.

Second. There was no "double penalty" or pyramiding of claims, as those terms are properly understood and considered in the awards cited in the dissent.

The claims involved the question of proper payment, for work performed, under special rules relating solely and exclusively to the particular "employment situations" involved. No "penalty" is involved when the applicable rules merely provide a special rate for specified work.

The negotiators certainly knew that rest days and holidays would commonly coincide in time. Knowing this, they negotiated separate and distinct provisions for payment when work was required of an employe in either situation. And since they made no exception for those instances when both situations occurred on the same day, they must have intended the payment to apply to both situations, just as all the awards have held.

Finally, it should not be forgotten that every deliberative body which has considered the subject of free time for railroad employes has made it quite plain that every practicable means should be employed in assuring these employes that they are to be freed from duty as far as possible on their rest days and holidays.

When an employe is deprived of both a rest day and a holiday he may well be presumed to have been doubly inconvenienced. There is nothing wrong, therefore, with the rules which require "double" pay under such circumstances.

This award, and those preceding it, have properly given effect to the applicable rules as they are written, which is also consistent with the purpose sought to be achieved when rest days and holidays were provided for railroad workers. It follows that the dissents are speciously reasoned and have no value.

J. W. Whitehouse