

Award No. 12042
Docket No. TE-10589

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1-(a) Carrier violated the Telegraphers' Agreement when it failed to properly compensate R. R. Williams for service performed on the Clinton Agent-Telegrapher position outside his regular assigned hours on the 15th, 16th, 17th, 22nd, 23rd, 24th, 29th and 30th days of April, 1957.

1-(b) Carrier also violated the Telegraphers' Agreement when it failed to properly compensate R. R. Williams, occupant of the Clinton-Harriman rest day relief position for services performed outside his regular assigned hours and on his regular assigned rest days, April 25 and 26, 1957.

2-(a) Carrier shall compensate R. R. Williams at time and one-half the pro-rata rate of \$2.175 per hour, \$26.10 per day, for each and every day claimant was required to perform service outside his regular assigned hours on the dates set forth in part 1-(a) hereof.

2-(b) Carrier shall compensate R. R. Williams at time and one-half the pro-rata rate of \$2.175 per hour for services performed on the Clinton Agent-Telegrapher position on the dates set forth in part (b) hereof, claimant's regularly assigned rest days and also hours outside his regular assignment. Since the Carrier has already compensated claimant at the straight pro-rata rate, he is now entitled to an additional \$8.74 per day for each and every day he was held off his regular assignment. Total amount due under parts 1-(a) and (b), \$87.30.

EMPLOYES' STATEMENT OF FACTS: The claimant, R. R. Williams, is the regular assigned rest day relief at Clinton-Harriman, Tennessee. His relief assignment with assigned hours is programmed as follows:

During the entire period that the Agreement in evidence has been in effect, the former accepted practice has been followed by utilizing in situations such as here involved, where there is no extra telegrapher qualified and available to perform vacation relief work, to utilize the regularly assigned employees. This is clearly authorized by the referred to rules, cited herein. In fact, the ORT concedes this point, but demands a higher rate of pay than that authorized by the Agreement.

As evidence of the former accepted practice and the fact that claims such as here involved have never heretofore been paid, and the ORT has in fact, conceded the point at issue, there are attached hereto and made a part hereof, affidavits made by a number of railway officials, all of which are self-explanatory. They all confirm the fact that in the instant case the former accepted practice was followed. Rule 44 of the Agreement in evidence confirms this fact also.

That the complained of action was in accordance with the former accepted practice is, therefore, an inescapable conclusion.

CONCLUSION

Carrier has shown that the effective Telegraphers' Agreement was not violated as alleged and that the monetary demand is not supported by any provision contained therein. In fact, the claimant benefited materially by the change having been made.

That the complained of action was in strict compliance with the former accepted practice is confirmed by the first paragraph of Rule 44 of the Agreement in evidence and the affidavits attached hereto.

Claim being without any basis the Board cannot do other than made a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the ORT's submission, reserves the right after doing so to make response thereto and present any other evidence necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same in all material respects as in Docket No. TE-10302, Award No. 11970. We adopt the opinion therein as determinative of the issues in this case.

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.