

Award No. 12344

Docket No. TE-10884

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware & Hudson Railroad that:

1. Carrier violated the agreement when on July 24, 1957, it caused, required, or permitted Supervisory Agent Joseph Wilson to work a telegraph position at Plattsburg, New York.
2. Carrier shall now compensate telegrapher R. E. Deso, one call, 2 hours at time and one-half in the amount of \$6.28.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between The Delaware & Hudson Railroad Corporation, hereinafter referred to as carrier or management, and The Order of Railroad Telegraphers, hereinafter referred to as telegraphers or employees. The agreement was effective April 1, 1957, and it is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled in the usual manner through the highest officer designated by carrier to handle such disputes and failed of adjustment. The dispute is under the provisions of the Railway Labor Act submitted to this Division for an award, as provided in said Act.

1. There are three positions at Plattsburg, New York covered by the provisions of the collective bargaining agreement between the carrier and telegraphers.

2. Hours of service assigned are:

6 A. M. to 2 P. M.	(Mrs. P. M. Quinn)
8 A. M. to 4 P. M.	(W. C. Payne)
3 P. M. to 11 P. M.	(R. E. Deso)

a "call" to report for duty one hour in advance of his regular starting time, and paid for this one hour of additional service a total of two hours pay at punitive rates.

Had Agent Wilson foreseen that his action in this case would lead to a penalty claim, he had three alternatives to avoid the claim. First, he could have insisted that Assistant Agent Payne make an evening appointment for rules examination; second, he could have allowed Payne to go to the Rules Car at 3 P. M. and blanked the position of Assistant Agent for the final hour of the day; or, third, he could have held the first trick telegrapher-clerk on duty until 3 P. M., at an additional expense to the carrier of one hour at the punitive rate. In the interest of employe harmony, he chose to make himself available, if needed, and allowed Mr. Payne to accompany Mrs. Quinn to the Rules Car at 2 P. M.

In acting as the "Good Samaritan" in this case, Agent Wilson hurt no one. Mr. Payne was paid his full monthly salary without reduction being made for the time that he was excused, and was not required to revise his personal plans in order to visit the Rules Car. Mr. Deso was not deprived of any work which was rightfully his; he worked his regular tour of duty on July 24, 1957 for which he received his regular pay.

This claim is a demand by the organization that the carrier be required to pay two people at the same time, one of them under the provisions of the "call" rule which provides for three hours pay for two hours or less of work, to perform the duties of one assignment. It is obvious that such an interpretation would be absurd.

It is the position of the Carrier that the Board cannot, in good faith, sustain this claim, but in the event a sustaining award is rendered, Carrier urges that the proper claimant is Mrs. Quinn, the first trick Telegrapher-Clerk, and that the proper amount of penalty is one hour at the overtime rate of her position, due to the fact that the technically proper solution to this problem would have been to hold the occupant of the first trick position on duty until the reporting time, 3 P. M., of the occupant of the 2nd trick position.

OPINION OF BOARD: Was it a violation of the agreement for the agent, an employe not covered by the agreement, to man the telegraph and telephone for one hour during the excused absence of the assistant agent who regularly handled the telegraph work at this time and who was covered by the agreement?

We hold yes.

In July of 1957 the assistant agent asked for leave to take his rules examination at the same time as the clerk telegrapher. This would have the effect of leaving the office unmanned by a telegrapher.

The assistant agent asked the agent to "sit in" for him during the hour he would be absent and before his relief would arrive. The agent acceded to this request and during this hour handled the telephone and telegraph. It is admitted that the agent did this to accommodate the assistant agent so that previously made personal plans would not have to be upset. When his relief arrived the Claimant here, he promptly claimed this hour as properly his and the action a violation of the agreement.

In support of his position he cites the Scope Rules 2, 8, and 14.

Without going into the rules at length and without passing judgment on the equities of the dispute we hold that the facts support the Claimants interpretation of the rules.

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 20th day of March 1964.