

Award No. 12345
Docket No. TE-10815

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of The General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when on 54 dates between June 28 and September 18, 1957 it required Agent-Telegrapher G. H. Lawhorn, Carlisle, Iowa to travel to Hartford, Iowa and perform the agency work at that station in addition to his regular position at Carlisle.

2. Carrier shall compensate G. H. Lawhorn in the amount of a day's pay (8 hours) on each day he was required to perform this service in addition to pay already received.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

During the period covered by this claim, G. H. Lawhorn was the regularly assigned occupant of the position of Agent-Telegrapher at Carlisle, Iowa, a one man station, with assigned hours 7:00 A. M. to 4:00 P. M. (one hour meal period) and assigned rest days of Saturday and Sunday, position not relieved on rest days. Rate of pay \$2.128 per hour, including the escalator adjustment.

Hartford, Iowa, is a closed station 5.1 rail miles and 6¼ highway miles from Carlisle where several years ago there was a position of Agent-Telegrapher. The rate of that position adjusted to the dates of the claim period would be \$2.056 per hour. Due to a large construction project near Hartford, the Carrier made arrangements with the Hallett Construction Company for the use of the siding at that station as a storage and team track for car load shipments of material consigned to that company at Hartford. During the period that the construction company was operating at Hartford, this Carrier required agency service at that station.

“RULE 13 (b) 2

An employe notified or called to perform work in advance of and continuous with the regular work period shall be paid three (3) hours at the straight time rate for two (2) hours work or less, and at the overtime rate thereafter on the minute basis, for the time required to work in advance of the regular starting time.”

These rules, as to payment, therefore, were properly complied with.

They also claim we violated Rule 13 (c) which reads:

“RULE 13 (c)

Employees will not be required to suspend work during regular hours or to absorb overtime.”

This rule has no application in the instant case. The claimant was not required to suspend work during regular hours or absorb overtime to check cars at Hartford because that work was performed before the starting time of his regular assignment or on a rest day. The claimant worked his own full assignment at Carlisle and at Hartford he worked only prior to his regular starting time at Carlisle. Therefore, payment under Rule 13 (b) 1 and 2 was the only payment required under the circumstances.

OPINION OF BOARD: Do the facts here require a penalty award?

We hold no.

Carrier breached the agreement when it required the Claimant, a telegrapher, to travel approximately twelve miles a day round trip from his assigned location at Carlisle to Hartford, Iowa, on 54 successive working days.

Instead of re-opening a closed station, the work of which would be the checking of box cars for demurrage on a siding utilized by a construction company, the Carrier directed the Claimant to begin work two hours before his regularly assigned time of 7:00 A.M. and obtain the demurrage information at Hartford before reporting.

This was done although a rule prohibited a telegrapher from Carlisle working at two separate locations. For this service the Carrier reimbursed Claimant at the rate of 7 cents a mile for the use of his car and paid him each day the equivalent of a call, i.e., 3 hours' pay for two hours or less work.

Claimant contended that the Hartford position was a new position and that the pay should have been 8 hours at straight time as required by this in addition to the call pay.

“RULE 3. BASIC DAY.

Except as otherwise provided in this agreement, eight (8) consecutive hours, exclusive of meal hour, shall constitute a day's work.”

The Carrier admitted its action was contrary to the rules, but contended the call pay was sufficient payment under the circumstances.

Our attention has been directed to no specific rule which requires that a monetary penalty for this breach be imposed beyond the payment already made.

Absent that we do not believe the facts here present require that relief be granted beyond that accorded.

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 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 violated.

AWARD

To the extent the claim has been already paid it is sustained. As to the additional claim for eight hours' straight time, the claim is denied.

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.