Award No. 12408
Docket No. TE-11276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the Agreement between the parties when it failed to compensate J. H. Hughes for service performed on Tuesday (rest day of his assignment at Athens, Georgia), July 8, 1958.

2. Carrier shall be required to compensate J. H. Hughes for eight hours at the time and one-half rate of the second shift clerk-operator's position at Athens, Georgia, for service performed on July 8, 1958.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was originally entered into prior to the reorganization of the present Corporation, which, as shown above, is Seaboard Air Line Railroad Company. The rules Agreement effective October 1, 1944 and all amendments thereto, have been fully adopted by Seaboard Air Line Railroad Company and are in full force and effect. The Agreements are on file with this Division and are, by reference made a part of this dispute as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. J. H. Hughes, claimant, was at all times involved herein the regular assigned employe on second shift clerk-operator position at Athens, Georgia.

2. The position of second shift clerk-operator, Athens, Georgia, was at all times involved herein assigned to work 4:00 P. M. to 12:00 Midnight, seven days per week.

In connection with the application of other rules dealing with "service" and "work" the various Divisions of the Adjustment Board have consistently held that such terms as used in agreement rules mean work of the type to which an employe is usually assigned and which is encompassed within the Scope Rule. See Third Division Awards 134, 409, 1816, 2132, 2512, 2778 and 3302.

Third Division Award 7631:

> "However advisable or justified a Rule providing payment for time spent, as here, we are unable to find that attendance at the classes in question was either 'work' or 'service' within the meaning of the effective agreement. This Board has consistently held in its awards, the latest being Award 7577, that claims of the type here present are without merit.
>
> Suffice to say this Board has no right to promulgate new rules; its authority is limited to the interpretation of existing rules."

In every instance where there was a special rule dealing with compensation for attending investigations (as in the instant case), it was held that such special rule controlled and no consideration has been given to the general rules which the organization is relying on in this dispute.

Obviously, to hold that the general rules, such as the 40 Hour Work Week Rules, Call Rules, etc., have application in this case is to nullify special Rule 18, written expressly to cover such cases. While it is true that Rule 18(b) was negotiated prior to the adoption of the 40 Hour Week Agreement, nevertheless nothing in that agreement nullified or set aside Rule 18. As a matter of fact, Rule 18 was wholly unaffected by the adoption of the 40 Hour Week, as is proven by the fact that it has been continued and carried forward in the most recent revision of the ORT Agreement, effective January 1, 1959.

It is the Carrier's position that the claimant was properly paid in accordance with the controlling rule and the claim should therefore be denied.

OPINION OF BOARD: The essential facts are not in dispute. Claimant was required to appear as a witness for the Company at an investigation held at Atlanta, Georgia, on July 8, 1958, which was one of Claimant's rest days. Carrier admits that Claimant is entitled to eight hours' pay at the pro rata rate, although the record is not clear whether Claimant was actually paid that amount. Petitioner contends that Claimant is entitled to eight hours' pay at the time and one-half rate.

Petitioner and Carrier each support their respective positions by relying on the provisions of Rule 18 (b). On August 30, 1958, Petitioner's Local Chairman wrote to Carrier's Superintendent, in part, as follows:

> "I am unable to understand Mr. Sammon's position inasmuch as Rule 18, paragraph (b), clearly states that an employe required to attend investigation as a witness shall be paid what he would have earned had he remained on his position on that date."

Carrier's Superintendent replied on September 12, 1958, and, in part, said:

> "Operator Hughes has not been removed from his assignment second trick Athens. He received compensation for his work week prior to and following July 8th, 1958. He has no assignment on Tuesday and Wednesday; consequently, Rule 18-B has been complied with in the instant case."

The precise issue, involving the same parties, and the same Rule was considered by this Division in Award 10252 (Rose). There, as here, Petitioner argued that the Forty-Hour Work Week Agreement superseded, or at least, gave meaning to Rule 18 (b). We held that the first sentence of that Rule did not apply, because Claimant had not "remained on his position" when he attended the investigation. Continuing, we said:

> "Under the second sentence of Article 18(b), the allowable compensation 'on day required to attend investigation' is 'a day's pay at the rate of his position or positions last worked, for each day absent from home' which is pro rata rate, unless the parties have otherwise provided by reason of their adoption of provisions of the Forty-Hour Work Week Agreement. There is no showing that by the last mentioned provisions, parties intended to supersede the terms of Rule 18 (b) or that the Forty-Hour Work Week provisions were intended by them to be applicable to the special type of services described in Rule 18 (b). In the absence of such showing, Rule 18 (b), as a specific rule applicable to the particular services therein mentioned, must be regarded as prevailing."

Rule 18 is a special rule which deals with a special subject. If the parties intended that employes attending investigations as witnesses on their rest days should be paid at the time and one-half rate, they should have so provided. Instead, it provides that such employes "be allowed a day's pay at the rate of his position. . . ." The "rate of his position" can only mean the pro rata rate. The findings and conclusions reached in Award 10252 are affirmed.

Inasmuch as there is no conclusive evidence in the record that Claimant actually received any pay for July 8, 1958, we are obliged to sustain the claim for eight hours' pay at the pro rata rate. Should it develop that Claimant has already received such payment for the day involved, then this finding shall have no valid effect.

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 Carrier violated the Agreement if Claimant has not received eight hours' pay at the pro rata rate for July 8, 1958.

AWARD

Claim sustained in accordance with the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1964.