

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN RAILWAY SYSTEM**

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

1. Carrier violated the Telegraphers' Agreement when on the 1st day of January 1958, it closed the telegraph or train order office at Barnard, North Carolina, and permitted or required an employe not covered by the Agreement to perform the duties of telegrapher, and

2. As a result of this violative act the Clerk-Telegrapher, H. L. Houston, at Barnard shall be compensated in accordance with the terms of the Telegraphers' Agreement, for eight (8) hours at time and one-half times the pro rata rate of \$2.33, the prevailing rate of pay, of which he was improperly deprived — total amount due \$27.96.

EMPLOYEES' STATEMENT OF FACTS: Barnard, North Carolina is a station located on carrier's line between Morristown, Tennessee and Asheville, North Carolina, in the rugged mountainous region of North Carolina. Barnard is approximately 31.9 rail miles from Asheville and 55.5 miles from Morristown. Effective 12:01 A. M., June 30, 1957, the carrier abolished the agent-telegrapher's position 8:00 A. M. to 5:00 P. M., one hour for lunch, a five-day position, and effective the same date established the following two seven-day positions: An Agent-telegrapher's position was negotiated to work from 4:00 P. M. to 12 midnight, with rest days of Tuesday and Wednesday. A clerk-telegrapher's position was negotiated to work from 12 midnight to 8:00 A. M., with rest days of Wednesday and Thursday.

The rest days of these seven-day positions were protected by a rest-day relief assignment, bulletined as the Marshall-Barnard relief position and is worked as follows:

Marshall, N. C. 8 A. M. to 5 P. M., one hour for lunch,
Saturday and Sunday

Barnard, N. C. 4 P. M. to 12 Midnight, Monday and Tuesday

Barnard, N. C. 12 Midnight to 8 A. M., Wednesday

Assigned Rest Days — Thursday and Friday

As claimant performed no holiday work within the terms of the effective agreement, the claim for eight hours' pay at time and one-half rate is not valid for the reasons stated, and carrier requests that the Board deny the claim in its entirety.

OPINION OF BOARD: At Barnard, North Carolina, there are two seven-day positions covered by the telegraphers' agreement. On the holiday of January 1, 1958, the train order office at Barnard was closed on instructions of the Carrier's Chief Dispatcher. About 7:00 A.M. on January 2, within the holiday period, and within the usual regular hours of the position claimant Houston would have ordinarily occupied, a train order was issued to the conductor of a train by means of a telephone located at the west end of the siding at Barnard.

The Employees contended that their rights were thus violated and filed a claim for eight hours at the holiday rate of time and one-half. The Carrier declined this claim and the resulting dispute was not resolved in further handling on the property.

From a careful study of the record we are convinced that the only real question in dispute is whether the claimant should be paid eight hours at the time and one-half rate as claimed, or two hours and forty minutes at the time and one-half rate, as contended by the Carrier.

The Carrier's contention is based on Rule 31, which provides that when train orders are handled by other than telegraphers in emergencies the telegrapher "will be paid for the call". Carrier obviously construes this to mean the minimum payment provided by Rule 10(a).

The Employees base their contention on Rule 17, Section 1, sub-section (2), which provides a minimum payment of eight hours at the time and one-half rate "if required to work on a specified holiday, within the hours of the regular weekday assignment."

Rule 31 does not, within itself, provide a measure or rate of payment. It merely provides that the telegrapher "will be paid for the call." Both parties, therefore, are correct in realizing that recourse to other rules must be had to determine the measure of payment due. This is true whether Rule 31 has application or not.

To resolve the controversy, it is necessary only to visualize the payment that would have been required if the claimant had actually been used to perform the work. This is made clear by the following observation from our Award 4131:

" . . . We believe that where a rule has been violated we should treat as done, that which should have been done. . . ."

If claimant had been used to perform the work Rule 10(a) could not have applied because it deals only with payment when an employee is "called to perform work outside of established hours", and this work was within the regular established hours of the position. On the other hand, Rule 17, Section 1, (2), specifically applies to payment for work performed on a holiday within the regular weekday hours, which is exactly the situation we would have had here if the claimant had been used.

It follows that the position of the Employees must be sustained, and we so hold. This conclusion is supported by a number of our awards, 9203, 10602, 12221, and 12702, for example.

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 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 23rd day of July 1964.