

Award No. 13662
Docket No. TE-12598

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Committee of The Order of Railroad Telegraphers on the Illinois Terminal Railroad, that:

1. Carrier violated the Agreement between the parties when it failed to properly compensate Extra Telegrapher B. G. Ebert for service performed at Benld, Illinois on June 18 and 19, 1960.

2. Carrier shall compensate B. G. Ebert in the amount of a day's pay on each date, less amount already paid.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 16, 1957, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

The Agent at Cavender, Illinois, also has Benld, Staunton, Hamel, and Edwardsville under his jurisdiction and performs work at each of these stations in addition to the station at Cavender. In reality the position is Agent Cavender-Benld-Staunton-Hamel-Edwardsville. The position is a five-day position, with Saturday and Sunday as assigned rest days, not relieved on rest days. Occasionally, some work is required on Saturdays and/or Sundays at one or more of these stations embodied in this position. Ordinarily, the regularly assigned occupant of the position is required to perform this work. During the work week of the position, beginning Monday, June 13, 1960, the position was occupied by R. W. Merriman, relieving the regular Agent, and he worked the position Monday through Friday, June 13-17, inclusive. He was not notified prior to the end of his tour of duty on Friday, June 17, of any need for his service on either Saturday or Sunday; when need for service at Benld arose on Saturday, June 18, and Sunday, June 19, he could not be located. Extra Operator B. G. Ebert was required to protect this work on both days. He was paid on each date for two hours at the time and one-half rate; in other words, on the call basis. Extra Operator Ebert had not worked the position on any of the work days of the work week; during the work week beginning on Monday, June 13, he had worked only one day — third trick at Leclaire Tower on Monday, June 13. On Saturday and Sunday he was not working on his rest days.

employee, and the pay practice on the carrier has been to pay an extra employee the same compensation that the regular assigned employee would receive for which he was filling in for. Under the exception in Rule 10 (a), since this was a rest day of the regular assigned employee, the guarantee would not be applicable. Then what rule does apply? One must go to Rule 4, Section 1, paragraph (k) of the agreement which is set out in carrier's Statement of Facts above, and which is entitled "Service on Rest Days." Rule 4 provides that the carrier is only required to pay a minimum of two hours at time and one-half rate to regular assigned employees on their rest days. Thus, as stated, the pay practice on the carrier has been to pay extra employees the same compensation, which, in this case, would be a two-hour minimum at overtime rate. There is no rule in the agreement specifically covering method of payment to extra employees, much less any guarantee rule for such an employee.

In conclusion, the carrier states that the record clearly shows that claimant did not work the Cavender Agency on June 18 and 19, 1960, but that the call on these dates was worked by the regular assigned vacation relief agent who was paid in accordance with the agreement. Therefore, the Board cannot do otherwise than to dismiss the claim. Even if collusion be involved between the claimant and said vacation relief agent in violation of carrier's Operating Rule 904, there is nothing due the claimant except a two-hour minimum at overtime rate under the rules and pay practices of the carrier and the carrier has already satisfied this obligation when it paid time-slips of Agent Merriman.

(Exhibits not reproduced.)

OPINION OF BOARD: After a thorough consideration of the record, it is the judgment of the Board that under the particular circumstances of this case, and without construing the rules as they might apply in any other case, the claim should be sustained.

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 claim will be disposed of in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1965.