



Award No. 14405

Docket No. TE-14044

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

BESSEMER AND LAKE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bessemer and Lake Erie Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate G. E. Brown, third shift block operator, Greenville, Pennsylvania, a three hour call for service performed in advance of his assigned starting time on each date, August 27, 28, September 2, 7, 8 and 9, 1961.

2. Carrier shall compensate G. E. Brown for the difference between the time and one-half rate paid on the minute basis and the time and one-half rate of the minimum of a call allowance of three (3) hours' pay for each date August 27, 28, September 2, 7, 8 and 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective February 1, 1948, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

GV Tower, Greenville, Pennsylvania, is located on the main line of the B&LE Railroad, 62.9 miles south of Erie, Pennsylvania and 100.4 miles north of Munhall, Pennsylvania. The Carrier's main offices are also located at Greenville. The Bessemer and Lake Erie Railroad engages principally in the transportation of steel.

Prior to the dates of the claims here involved, Carrier maintained round-the-clock block operator positions at GV Tower, Greenville. Carrier first abolished one shift and later abolished another which left only one position at GV Tower seven days per week. On dates of the instant claims, the shift occupied by Claimant G. E. Brown had hours of assignment 11:00 P. M. to 7:00 A. M. In addition to block operator's duties, the operators at GV Tower also control the crossing gates at Main Street, Greenville. On each date of the claims here involved, claimant was notified or called to commence duty in

are worked, eight (8) consecutive hours, with no allowance for meals shall constitute a day's work. At stations where lap shifts are worked by agents and/or clerk-operators, eight (8) consecutive hours, exclusive of the meal period shall constitute a day's work.

(b). Time worked in excess of eight (8) hours on any day, shall be considered overtime and paid for at the time and one-half rate on the minute basis."

Rule 6 (Notified or Called) reads as follows:

"Employees notified or called to perform work not continuous with the regular work period shall be allowed a minimum of three (3) hours at time and one-half rate for three (3) hours worked or less, and if held on duty in excess of three (3) hours, time and one-half rate shall be allowed on the minute basis. Each call to duty after being released shall be a separate call."

Attached to and made a part of this submission are the following exhibits, covering the handling of this claim on the property:

EXHIBIT A — Letter from General Chairman T. A. Neelan to General Superintendent J. W. Read presenting the claim in this case for Operator G. E. Brown.

EXHIBIT B — Record of General Superintendent J. W. Read's conference with General Chairman T. A. Neelan, January 8, 1962.

EXHIBIT C — Record of General Manager R. D. Lake's conference with General Chairman T. A. Neelan, March 30, 1962.

The Order of Railroad Telegraphers is, under the Railway Labor Act, the duly authorized bargaining agent for the classes or crafts of agents, clerk-operators, telegraph and telephone operators (except telephone switchboard operators) and levermen.

There is an agreement in effect between this Carrier and The Order of Railroad Telegraphers, effective February 1, 1948, governing rates of pay, rules and working conditions, copy of which is on file with the Third Division of the National Railroad Adjustment Board and is hereby referred to and made a part of this dispute.

OPINION OF BOARD: At GV Tower, Greenville, Pennsylvania there was one position, seven days a week. In August and September, 1961, on the dates of the claims submitted the shift occupied by Claimant Brown had hours of assignment 11:00 P. M. to 7:00 A. M. Claimant was called, on each of the dates enumerated, to commence duty in advance of his regular starting time at 11:00 P. M. extending from one-half to two hours and worked without any interval of release from duty right up to the starting time of his regular assignment. The Carrier refused to compensate Claimant under Rule 6 of the Agreement for a "call" allowance for three (3) hours' time at time and one-half pay but Superintendent paid Claimant on a minute basis or a continuous time basis as provided for in Rule 2 (b) of the Agreement.

Rule 6 provides:

"Employees notified or called to perform work not continuous with the regular work period shall be allowed a minimum of three (3) hours at time and one-half rate for three (3) hours worked or less, and if held on duty in excess of three (3) hours, time and one-half rate shall be allowed on the minute basis."

Rule 2 (b) provides:

"Time worked in excess of eight (8) hours on any day, shall be considered overtime and paid for at the time and one-half rate on the minute basis."

It is the contention of the Claimant that service performed in advance of the regular starting time and continuing into regular hours cannot be considered as overtime and paid on a "minute" basis as provided for in Rule 2 (b) but must be paid for in compliance with Rule 6 on the basis of not less than the minimum "call" rate as Claimant was called to perform work not continuous with the regular work period.

Carrier, to the contrary, submits that Rule 6 is clear in its meaning and intent and provides a special allowance for an employee who is called to perform work not continuous with his regular work period; that work performed continuously with the regular work period whether before or after the regular work period where there is not an interval of release from duty is not within the contemplation of Rule 6 and is overtime, properly compensated for under the provision of Rule 2 (b).

Carrier urges that Rule 6 was agreed to after negotiations in March 1947. That at the time of these negotiations the Petitioner, in addition to the present Rule 6, proposed the following:

"(b) Employees required to report for duty before the assigned starting time, shall be paid three (3) hours at the time and one-half rate for two (2) hours' work or less, and at the time and one-half rate thereafter on the minute basis for the time required to work in advance of the regular starting time."

Such a rule would have supported a payment such as that claimed in this case; however, such a rule was not agreed to.

It appears, conclusively, from the Record that since that time (1947) employees who were called in advance of their regular starting time and worked uninterruptedly right up to the starting time of their regular assignments were uniformly paid overtime under the provisions of 2 (b) without any complaint from the Organization until the present claim.

The Petitioner has contended that the interpretation of the "call" Rule established by the U. S. Railroad Administration in Supplement No. 13 to General Order No. 27 dated December 1918, is applicable to present Rule 6. The Rule promulgated by the U. S. Railroad Administration was changed on this Carrier in 1921 and as the Rule since that time has not been the same, Carrier has not applied that interpretation since. The Organization has not contended that it did apply until the present claim. Consequently, we will give it no further attention.

Award 3181 — Thaxter, a sustaining award, cited by the Petitioner in support of the Claim, where a rule similar to the one here is involved, contains the following statement: "We hold that the problem is settled by the interpretation which the parties themselves have placed on the language of the rule . . ."

Applying this reasoning to the case before us we find, initially, that in negotiating the current Rule 6 of the Agreement, the Organization proposed and the Carrier rejected an addition to the rules, hereinbefore cited, which would have entitled the Claimant to the reparation he is now seeking. After 1947, the time of these negotiations, employees who were called in advance of their starting time, without an interval of release from duty, up into their regular starting time, were uniformly paid under the provisions of 2 (b) without any complaint from the Organization until this present claim. The parties to this Agreement by their conduct have interpreted the intention of Rule 6 in its application. The effect of granting this claim would constitute a modification of an Agreement reached by the parties. This Board is being asked to grant something the Agreement does not provide, and which when proposed by the Organization was rejected by the Carrier: See Award 2461 — Smith.

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.