

Award No. 14995

Docket No. TE-13198

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad for eight (8) hours at punitive rate for Extra Block Operator H. W. Wickline for work performed at Wood Block Station June 26, 1960. Extra man called and used entitled to one day's pay. The work performed by H. W. Wickline was the sixth day of his work week.

EMPLOYEES' STATEMENT OF FACTS: Wood Block Station (formerly Homewood Junction) is located 35 miles west of Pittsburgh, Pennsylvania on the Carrier's main line Pittsburgh to Chicago. Claimant H. W. Wickline, an extra man, had worked Monday through Friday, June 20 to 24, 1960, on the first shift block operator's position at Leetonia, Pennsylvania, following which he was to observe two rest days, Saturday and Sunday. He was ordered out Sunday morning and required to work at Wood Block Station 3:00 A.M. to 6:00 A.M., for which service he was allowed three hours at time and one-half rate, instead of the minimum of a basic day, eight hours at time and one-half rate.

Other facts are fairly related in the following correspondence exchanged on the property.

"1453 Janice St. N.E.
Massillon, Ohio
July 13, 1960

Mr. P. N. Mansfield
Superintendent-Personnel
Lake Region
Cleveland, Ohio

Dear Sir:

The General Committee of the Order of Railroad Telegraphers wishes to docket for discussion at our regular monthly meeting July 22, 1960:

Claim for eight (8) hours at punitive rate for extra block operator H. W. Wickline for work performed at Wood

OPINION OF BOARD:

"JOINT STATEMENT OF AGREED UPON FACTS: Claimant H. W. Wickline held position of Extra Block Operator.

During period June 20 to 24, 1960, inclusive, claimant H. W. Wickline performed service for 8 hours each date, and, as a result of the third trick Block Operator at Wood Block Station becoming disabled, claimant was called to perform service at this location from 3:00 A.M. to 6:00 A.M., June 26, 1960.

For all service performed at Wood Block Station on Sunday, June 26, 1960, claimant was compensated on a minute basis at the overtime rate of pay.

POSITION OF EMPLOYEES: Claimant H. W. Wickline is an extra Block Operator, and after working five days in his work week, June 20 to 24, 1960, inclusive, was required to perform service at Wood Block Station on Sunday, June 26, 1960, from 3:00 A.M. to 6:00 A.M. For this service he was compensated for three (3) hours at overtime rate.

Decision 58 of the Telegraphers' Reviewing Board established the principle that an extra employe who performs service can be paid no less than eight (8) hours. Awards 4681 and 5380 sustain this principle, which has been applied on this Railroad since 1931. In the instant case, Mr. Wickline shall be paid no less than eight (8) hours at the pro rata rate; however, this was his sixth working day, which requires that he be paid at the punitive rate as provided in Regulation 4-F-2 of the Telegraphers' Agreement.

System Docket No. 182, an identical claim, provides for payment at the punitive rate for eight (8) hours, will also support our claim.

POSITION OF COMPANY: Claimant H. W. Wickline, who had already performed service for 40 hours during the work week in question, was properly compensated on an overtime basis for the time actually worked when called to complete the tour of duty of an employe who became disabled, and there are no provisions of the Schedule Agreement that would provide for payment of claim submitted in instant case.

In these circumstances, there is no merit to claim, and it should be denied."

Having determined that Claimant, through the Organization, did not violate the Time Limit Rule, we proceed to consider the dispute on the merits.

Consistent with Decision 58 of the Telegraphers' Reviewing Board, Carrier pays an extra operator who reports and performs assigned service the equivalent of a minimum of 8 hours' pay at the pro rata rate, irrespective of how much time is involved.

Claimant contends that this was his 6th working day, and that under the provisions of Regulation 4-F-2(a) he is entitled to eight hours at the premium rather than eight hours at the pro rata rate for working three hours.

Regulation 4-F-2(a) reads as follows:

"4-F-2. (a) Time worked in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the applicable straight time rate, except where such work is performed by an employe due to moving from one assignment to another, or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (h) of Regulation 5-G-1.

Employes worked more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth (6th) and seventh (7th) days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another, or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (h) of Regulation 5-G-1."

It is clear from the language of Regulation 4-F-2 (including the language in the second paragraph) that the premium rate is to be paid only for time actually worked.

The fact the Carrier paid the premium rate in another dispute (even assuming that it could be considered a past practice) is not controlling where the regulation is clear and unambiguous. Awards 6773 and 4534.

In accordance with Decision 58, Claimant is, therefore, entitled to a minimum of eight hours at the pro rata rate for the time worked.

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

That the Agreement was not violated.

AWARD

The Claim for eight hours at the premium rate is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.

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