

Award No. 15557
Docket No. TE-14104

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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. (a) Carrier violated and continues to violate the Agreement between the parties when commencing on Saturday, December 16, 1961, and continuing thereafter Monday through Saturday each week, instead of permitting the occupant of the ticket clerk-operator position at Sebring, Florida to perform the service required on that position outside the regularly assigned hours, it requires the monthly-rated agent to perform such required service, thereby increasing the hours of service of the monthly-rated agent to absorb overtime of the ticket clerk-operator position at that station.

(b) Because of this violation Carrier shall compensate R. R. Rainey, regularly assigned to the ticket clerk-operator position at Sebring, Florida, for a call of two (2) hours' pay at the overtime rate for each day except Saturday and Sunday of each week commencing Monday, December 18, 1961, and continuing thereafter until the violation is discontinued; and Carrier shall compensate R. G. Hodges, regularly assigned occupant of the relief operator position at Sebring, Florida, for a call of two (2) hours' pay at the overtime rate for each Saturday commencing December 16, 1961, and continuing thereafter until the violation is discontinued.

2. (a) Carrier violated and continues to violate the Agreement between the parties when commencing on Saturday, December 16, 1961, and continuing thereafter Monday through Saturday of each week, instead of permitting the occupant of the ticket clerk-operator position at Avon Park, Florida to perform the service required on that position outside of regularly assigned hours, it requires the monthly-rated agent to perform such required service, thereby increasing the hours of service of the monthly-rated agent to absorb overtime of the ticket clerk-operator position at that station.

(b) Because of this violation Carrier shall compensate R. K. Cook, regularly assigned to the ticket clerk-operator position at Avon Park, Florida, for a call of two (2) hours' pay at the over-

time rate for each day except Sunday and Monday of each week commencing Saturday, December 16, 1961, and continuing thereafter until the violation is discontinued; and Carrier shall compensate R. G. Hodges, regularly assigned relief operator at Avon Park, Florida, for a call of two (2) hours' pay at the overtime rate for each Monday commencing December 18, 1961, and continuing thereafter until the violation is discontinued.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1959, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

This dispute arose out of Carrier's action of requiring the monthly rated agents at Sebring, Florida and at Avon Park, Florida, to perform work accruing to the occupants of the position of ticket clerk-operator at Sebring and Avon Park respectively.

Two separate claims were handled on the property, one covering the violations at Sebring and the other at Avon Park. Inasmuch as the handling of the claims was almost identical, they are submitted to your Board as one dispute. The claim presented in the Avon Park case is attached hereto as ORT Exhibit 1. The claim presented in the Sebring case is attached hereto as ORT Exhibit 2. Employees also attach ORT Exhibits 3 through 7 (correspondence in the Sebring Claim), which reflects the typical handling on the property. The claims were filed and handled in the usual manner up to and including the highest officer of the Carrier and have been denied.

Both Sebring and Avon Park are located on the North Florida Division of the Carrier's lines. Statement of Claim names one claimant as R. G. Hodges. The correct spelling of that claimant's name is R. G. Hedges.

There are two positions covered by the Agreement at Avon Park, Florida. One is the position of agent, which is monthly rated, works six days per week, Monday through Saturday, with hours of assignment of 8:00 A.M. to 5:00 P.M. (one hour meal period). J. R. L. Kelly is regularly assigned to this position. The other position at Avon Park is classified as Ticket Clerk-Operator, a six day position with hours of assignment of 7:15 A.M. to 4:15 P.M. (one hour meal period) Monday through Saturday. R. K. Cook is regularly assigned to this position with assigned rest days of Sunday and Monday. The position does not work on Sunday. R. G. Hedges works the Monday rest day as a part of his regular relief assignment.

The freight and passenger stations at Avon Park are approximately 500 feet apart. The agent headquarters at the freight station. The ticket clerk-operator works at the passenger station.

Effective on Saturday, December 16, 1961, Carrier instead of properly using the ticket clerk-operator on a call or overtime basis, commenced to require the agent to meet passenger train No. 22 (scheduled to leave Avon Park at 7:43 P.M.) and perform all the work in connection with handling said passenger train. Such work aside from meeting Train No. 22 consists of selling tickets, checking baggage and handling train information by telephone with patrons of the railroad. All such work is regularly assigned to, and is performed by the ticket clerk-operator during his regular tour of duty of 7:15 A.M. to 4:15 P.M., and, prior to December 16, 1961 was performed by him outside regular hours on a call or overtime basis (in

and 8:30 A.M., and the Meal Period Rules—if it were not for the provision of the remainder of this rule, he could be required to absorb overtime of other employees within a 12 hour spread from time of commencing duty.

If the Company is requiring the agent at Lumberton to work 12 hours per day, six days per week, the last sentence of Rule 2(b) makes it clear he is paid on a basis of $208\frac{1}{3}$ hours per month. Thus, the agent will be working approximately 313 hours per month, and while we do not have the Lumberton rate before us, should it be, say \$416.66, the hourly rate would be comprehended as \$2.00 per hour, but working 313 hours would indicate the agent is being actually paid on the basis of \$1.33 per hour. This is lower than the minimum rate.

This claim will be listed for discussion at our conference November 25 at which time we hope you will agree to approve payment of the claim and to issue instructions that will prevent a recurrence of a similar violation."

That claim was discussed in conference with General Chairman Jones in conference of November 24-25, 1952 and declined to him by letter of December 2, 1952. It was not appealed further and, therefore, the decision became final and binding on the organization. It is not distinguishable from the claim now before your Board.

OPINION OF BOARD: At the outset we must observe that Carrier's declination—"I can see no violation of your working Agreement"—certainly meets this Board's requirement that the Organization be advised as to the reasons for Carrier's disallowance of a claim.

We are here concerned with a claim (1) in behalf a ticket clerk-operator position at Sebring and (2) a ticket clerk-operator position at Avon Park because the Carrier "requires the monthly rated agent to perform service required outside the regularly assigned hours of the ticket-operator position, thereby increasing the hours of service of the monthly rated agent, to absorb overtime on the ticket clerk-operator position at that station."

It is the Carrier's position that the agents at both points "have regular office hours of 8:00 A.M., to 5:00 P.M.; that the rules relating to the basic day, starting time and meal period (Rule 2 (b)) will not apply to monthly rated agents," and they are exempt therefrom.

The agent here was called within the twelve (12) hour spread of his assignment to perform this work during the Florida vacation season; it was agency work, and we find no violation.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1967.

DISSENT TO AWARD 15557, DOCKET TE-14104

The majority plainly dodged the issue in this case.

The facts are that during the so-called "Florida season" certain work in connection with a passenger train is required outside the assigned hours of the claimants, and has customarily been performed by them on "overtime" or "call" basis. There is a monthly rated agent at each of these stations whose regular hours do not extend to the time this passenger train is due. Effective December 16, 1961, Carrier required these monthly rated agents to meet the train and perform the required service without additional compensation, thus depriving the claimants of overtime they had previously earned.

Rule 2 (b) reads, in pertinent part, as follows:

"Rules 4, 5 and 6 will not apply to monthly rated agents listed herein except as provided in Rule 12; provided further that it is not the intention of this paragraph of this Rule to increase the hours of service of such employees to absorb overtime of other employees covered by Rule 1 and where such employees are called or required to perform routine or emergency service after twelve (12) hours from time of commencing duty for the day, they shall be paid in accordance with Call and Overtime rules." (Emphasis ours.)

Rule 4 is the "Basic Day" rule. Among other things it provides for 8 hours' service within a spread of 12 hours at small non-telegraph agencies. Rule 5 is the starting time rule, and Rule 6 provides for meal periods. Rule 12 is the 40-hour week rule which requires application of all rules to monthly rated employees on their one assigned rest day.

The monthly rated agents used to meet the train are not subject to the rule (Rule 4) permitting 8 hours within a spread of 12. They were used beyond their customary working hours of 8 A.M. to 5 P.M. solely to avoid using the claimants on overtime basis as had been done in the past.

The language of Rule 2 (b) which I have emphasized above, it seems to me, clearly prohibits such use of these agents. The majority has not explained why the language does not have this effect. For this reason I say it has dodged the issue.

The award is erroneous and I dissent.

J. W. Whitehouse
Labor Member

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