



Award No. 16060
Docket No. TE-14536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), that:

CLAIM NO. 1

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto when it required E. A. Cox, regular occupant of the second shift telegrapher-clerk's position at Luling, Texas to suspend work during her regular hours on December 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 22, 23, 26, 27, 28, 29 and 30 and on subsequent dates.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, pay N. H. Whitley, regular occupant of the agent-telegrapher's position at Luling, Texas a "call" for each of the dates set forth, and for each subsequent date so long thereafter as the violation complained of continues.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties hereto when it required H. L. Roger, regular occupant of the second shift telegrapher-clerk's position at Marathon, Texas to suspend work during his regular hours on January 29 and 31, 1963.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, pay L. D. Dielsti, regular occupant of the agent-telegrapher's position Marathon, Texas, a "call" for each of the dates set forth.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective December 1, 1946, and as

basis. Claim was discussed in conference April 19, 1963, following which it was declined. Carrier's Exhibit No. 6 reproduces the correspondence in this claim.

Release of the telegrapher-clerks from all duty and responsibility to remain at their post of duty for the intervals of time shown during their regular tours of duty when such release was given, was for the purpose of providing additional time for the telegraphers to remain on duty, or to be called on duty, for service after the end of their tour of duty, without their being on duty in excess of the 9 hours permitted under the Hours of Service Act within any 24-hour period of time.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns two claims, each embracing more than a single alleged violation by the Carrier of Rule 6 of the Agreement. Rule 6 provides:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

The Employees assert that, on several listed days at two separate stations, the second trick telegrapher-clerk was ordered to suspend work during his shift and to return to work later in the day to perform overtime work. The Carrier defends by asserting that, whenever such occurred, (1) the employee was paid his full eight hours' pay for his regular shift, even though a full eight hours were not worked; (2) the employee was also paid a call for his overtime work; and (3) the only reason for suspending the employee from his work during his regular hours was to avoid violating the Hours of Service Law, which did not permit the employee to be on duty more than nine hours in any twenty-four hour period.

This Board, in its interpretation of similar rules negotiated with other Carriers by this same organization, has held absolute the prohibition that "employees will not be required to suspend work during regular hours." Awards No. 9755 (LaDriere), 10979 (Moore) and 15720 (Miller). These three previous awards covering factual situations similar to the present are not found to be palpably erroneous, and will accordingly be followed in the present dispute. The Board holds that the Carrier violated Rule 6 of the Agreement each time it suspended an employee from his work during regular hours for the purpose of utilizing such employee after his working hours.

The Board next must determine, from the record, on which days violations occurred. The Employees claim that violations occurred on eighteen days at the station at Luling, Texas and on two days at the station at Marathon, Texas. Although the Carrier initially agreed on the property that work suspensions had occurred on all the claimed days, it is undisputed by the Employees that during conferences on the property the Carrier asserted that its time records reflected that work suspensions occurred at Luling only December 7, 28 and 29, 1962 and at Marathon only January 31, 1963.

The Employees offered no proof to substantiate their claim that work suspensions occurred on the other claimed dates, so this Board finds that work suspensions and violations of the Agreement occurred only on December 7, 28 and 29, 1962 at Luling and only on January 31, 1963 at Marathon.

The Board must last consider the question of damages. The Carrier asserts that the employees who were suspended from their regular working hours suffered no damages, since they received their full eight hours' pay as well as payment for a call on each day in question. But the claims before the Board are not made in behalf of such employees. The claims are made in behalf of other employees, persons who would have been called to perform overtime work had the suspended employees (1) not been suspended from their regular working hours and also (2) not been able to complete the overtime work in no more than one hour of overtime, which would have totaled nine hours of work, the maximum in a twenty-four hour period under the Hours of Service Law. Accordingly, the claims for a call on the four days mentioned above will be allowed.

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 violated on December 7, 28 and 29, 1962 at Luling, Texas and on January 31, 1963 at Marathon, Texas.

AWARD

Claim 1 is allowed for December 7, 28 and 29, 1962.

Claim 2 is allowed for January 31, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1968.