Award No. 16122
Docket No. TE-15231

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

QUANAH, ACME & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Quanah, Acme and Pacific Railway that:

1. The Carrier violated the Agreement between the parties when it failed and refused to properly compensate Telegrapher-Clerk D. R. Kincer when it suspended him from his regular assignment at Floydada, Texas on October 4, 5 and 6, 1963, and required him to work another position in that office outside of the hours of his own assignment.

2. Carrier shall be required to compensate Mr. Kincer the difference in the amount of compensation paid and that to which he was entitled on the following basis:

> For each day so used, eight (8) hours at straight time rate of his regular assignment, and for eight (8) hours at time and one-half rate of the position worked outside the hours of his regular assignment.

EMPLOYES' STATEMENT OF FACTS: In October of 1963, Carrier maintained a two-shift office at Floydada, Texas in which three positions under the scope of the Agreement between the parties were scheduled to work as follows:

(1) Seven-day Agent-Telephoner, 12:00 Noon to 8:00 P. M., rest days Saturday and Sunday.

(2) Seven-day Telephoner-Clerk, 8:00 P. M. to 4:00 A. M., rest days Monday and Tuesday.

(3) Five-day relief for above positions, Saturday through Tuesday, with a Friday assignment as Telephoner-Clerk 12:00 Noon to 8:00 P. M., rest days Wednesday and Thursday.

[Letterhead of]
"QUANAH, ACME & PACIFIC RAILWAY COMPANY

Quanah, Texas
January 16, 1964
392-9

Mr. Joe H. Abbott
General Chairman
Box 1366 S. S. Station
Springfield, Missouri

Dear Sir:

Referring to your file QAP: Reg. employe worked off position; which covers claim of Telephoner-Clerk, D. R. Kincer at Floydada, October 4, 5 and 6, 1963.

As advised in conference in Oklahoma City yesterday, we cannot see where there was any violation of agreement with respect to manner in which Kincer was worked on October 4, 5 and 6 and our position in this claim remains unchanged.

Yours very truly,

/s/ Quin Baker

CEH:mer"

* * * * * * * * *

CARRIER'S STATEMENT OF FACTS: The station force at Floydada, Texas, the western terminus of the Carrier, consisted of an Agent-Telephoner with assigned hours 12:00 Noon to 8:00 P.M. 7 days per week and Telephoner-Clerk assigned hours 8:00 P. M. to 4:00 A. M. 7 days per week.

By reason of only two assignments there are four days relief work per week, two days Agent-Telephoner and two days Telephoner-Clerk, and carrier considered this as extra work and protected this by extra board for the reason that there was no other relief work convenient, but in order to give extra man five days' work, he was permitted to work as clerk one additional day each week, working the same hours as the Agent-Telephoner for the purpose of assisting the Agent-Telephoner. On October 4, 1963, Agent-Telephoner at Acme, Texas was hospitalized in an emergency, and our other extra man, who was relieving Telephoner-Clerk at Floydada, was ordered to Acme, Texas to relieve Agent-Telephoner and Extra-Telegrapher Kincer, who was working the swing job four days and clerk one day, instructed to protect Second Telephoner-Clerk position.

OPINION OF BOARD: Claimant's schedule in the relief position at Floydada, Texas was Noon to 8:00 P. M. on Friday, Saturday and Sunday, and 8:00 P. M. to 4:00 A. M. on Monday and Tuesday, with Wednesday and Thursday as rest days.

On October 3, 1963, the occupant of the 8:00 P. M. to 4:00 A. M. shift was assigned to Acme, Texas, to replace an ill employe. The Noon to 8:00

P. M. man was therefore directed to extend his five-day schedule into his rest days on Saturday and Sunday. Claimant was directed to work on his rest day, Thursday, October 3, for which he was properly compensated. But Claimant was also required to work the 8:00 P. M. to 4:00 A. M. shift on Friday, Saturday and Sunday, instead of on his regularly assigned shift of Noon to 8:00 P. M.

The Employes assert that such a change in the schedule of a regularly assigned man is prohibited by the Agreement, unless properly compensated. Claimant merely received pro-rata pay for the three days, and contends time and one-half pay is also required.

During the consideration given to the claim on the property, Carrier wrote the Employes on November 20, 1963, stating that Claimant was not a regularly assigned employe, and that "for all purposes he is considered on the extra board." This letter did note that Carrier had agreed to "consider Kincer as having an assignment with a further understanding that the company would not be penalized if and when it was necessary to use him on another assignment."

Carrier's letter referred to a Memorandum between the parties effective October 13, 1962. The Memorandum contained the specific proviso that "the swing position at Floydada shall be assigned." There can be no doubt, consequently, that Claimant was regularly assigned. The reference in Carrier's letter to an understanding banning penalties referred to a sentence in the Memorandum that there would be no penalty claims flowing out of the establishment of 24 hour service. That provision is not involved in the case before us since 24 hour service was not being established.

Article IV, Section 2, of the Agreement states that "regularly assigned employes will receive eight (8) hours' pay within each twenty-four (24) hours . . . if ready for service and not used. . . ." Article VI, Section 1, provides that continuous service after regular working hours entitles employes to time and one-half pay, and Article VI, Section 3, provides that "employes will not be required to suspend work during regular hours to absorb overtime."

The foregoing provisions demonstrate that Claimant was improperly removed from his regularly assigned position. Since he was regularly assigned, and not an extra man, he should not have been "required to suspend work" on his regular assignment. When he was thereupon placed on the next shift, he became eligible, pursuant to Article VI, for time and one-half pay for that shift.

Thus there are grounds for holding that Claimant is entitled both to eight hours' pay for the shift from which he was suspended, and also to time and one half pay for the shift he worked. However, Award No. 5473, followed in substance by other awards, including No. 10861 on the same issue, held that "to allow both penalties concurrently is to allow a double penalty, and . . . the greater penalty above should be allowed." In the instant case the Board concurs with that decision.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Carrier shall pay Claimant pro-rata pay for twenty-four (24) hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.