

Award No. 16155
Docket No. TE-15075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL SYSTEM
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (W), that:

1. Carrier violated the Agreement when it failed to properly compensate G. E. Lawyer for his work week of March 4 to 10, inclusive, 1963.

2. Carrier shall compensate G. E. Lawyer for the difference between 43 hours and 12 minutes to which he was entitled and the amount which he was paid for his work March 4 to 10, inclusive, 1963.

EMPLOYEES' STATEMENT OF FACTS: Claimant G. E. Lawyer was an extra employe who worked as follows during the calendar week beginning Monday, March 4, through Sunday, March 10:

Wednesday, March 6, training assignment one day at OD Tower.

Thursday, March 7, worked extra MR Latimer, entitled to forty miles deadhead.

Friday, March 8, no assignment.

Saturday, March 9 and Sunday, March 10, worked BD Ticket Office and drove fifty-six miles deadhead.

Under the Agreement, Claimant Lawyer was entitled to his forty hours guaranteed pay plus the deadhead allowance, or, a total of 43 hours and 12 minutes. The Carrier failed to pay him, and demanded to include the deadhead mileage as part of his forty hours' guaranteed compensation. Therefore, the claim was made for the difference between the 43 hours and 12 minutes to which he was entitled and the amount which he was paid which was forty hours for the work week March 4 to 10, 1963.

The claim was appealed to the highest officer designated to handle claims and grievances, and declined by him. Claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect between the parties hereto and on file with your Board, an agreement covering rules and working conditions for Telegraphers' Agreement employes on the New York Central Railroad (Western District), dated November 1, 1950, reprinted January 1, 1955, which is, by reference, made a part of this submission.

Seniority District No. 2, described on page 37 of the agreement, includes Telegraphers' agreement employes at locations on the Carrier's Youngstown, Oil City, and Franklin Branches. The claimant in this case was an employe having seniority on and covering extra assignments at locations on these branch lines.

Mediation Agreement A-5809 - A-6063, effective January 7, 1963, provided for a guaranteed payment of forty hours to employes on the extra list.

During the week of March 4 through March 10, 1963, Claimant Lawyer was an extra operator on Seniority District No. 2 Guaranteed Extra List with a work week commencing with Monday. In that week Mr. Lawyer did not fail to work any day through his own volition, and under the terms of the Agreement of January 7, 1963, he was guaranteed payment for forty hours. For that week, the claimant was paid 24 hours for extra work performed, 8 hours for training, 3.33 hours for deadheading, and an additional 4.67 hours for which no service was performed, or a total of 40 hours paid.

The Employes submitted a claim for an additional payment of 3.33 hours, on the basis that payment for deadheading under Article 14 of the General Rules Agreement cannot be considered in computing the 40-hour guarantee.

This claim was handled on the property in the usual manner and is subject of the instant dispute now before your Board.

OPINION OF BOARD: The question presented in this case is whether deadhead pay can properly be included within the forty (40) hour per week guarantee prescribed by the Agreement. During the week in question, Claimant received pay for forty (40) hours, based on the following computation:

24 hours	—	Extra work
8 hours	—	Training
3.3 hours	—	Deadhead pay
4.67 hours	—	Guarantee, no service performed
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40 hours		Total Compensation

Petitioner avers that the 3.3 hours of deadhead pay should be considered over and above the forty (40) hour Agreement. In other words, he should have been credited with a total of eight (8) hours, rather than 4.67 hours, to make up the forty (40) hour guarantee, and that he should be compensated for the 3.3 hours in addition to the forty (40) hours. The dead-head pay is computed under Article 14 of the General Rules Agreement which reads, in part:

"(a) An extra employe, when called for service by proper official and required to deadhead by train or bus, shall be paid for the deadhead trip from his headquarters station to and from station for which called for actual time enroute at straight time rate of position to be worked. 'Time enroute' does not include any time at headquarters or at the point to which deadheaded. If the deadheading is by private automobile, time allowance shall be computed on the basis of 2 minutes for each mile based on shortest highway mileage between stations."

Carrier arguendo states that the payment of 2 minutes for each mile travelled, 3.33 hours, was not a reimbursement for expenses incurred by the Claimant in connection with the use of his automobile. Rather, he was compensated at the rate of the position he was travelling to cover, for the time spent enroute. Carrier also points out that Claimant was reimbursed for the use of his private automobile for each mile travelled at the prevailing automobile allowance mileage rate.

The Organization avers that the payment for deadhead time is in the nature of an "arbitrary", and should not be computed in fulfilling the forty (40) hour guarantee. Petitioner further states arguendo, "If the Carrier were consistent, and an employe was able to show that his deadhead converted to time plus the time actually worked on positions equalled more than forty hours, the Carrier should pay the excess over forty hours at the time and one-half rate, but the Carrier well knows that is not the way the Agreement is applied." This very issue was decided in Award 11275 (Stark) and reaffirmed by Award 11850 (Dolnick). Both awards held that deadhead pay could not be counted for the purpose of calculating punitive overtime pay. We agree with those awards. If deadheading cannot be so considered in an overtime issue, there is no reason why it should be included in the forty (40) hour guarantee. To sustain Carrier's position in this matter would be inconsistent. We will sustain the claim.

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1968.

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