

Award No. 16462
Docket No. TE-15507

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

1. Carrier violated the Agreement between the parties when it improperly compensated Operator H. J. Gammons, Longview, Texas on March 31, 1964.
2. Carrier shall compensate H. J. Gammons in the amount of eight hours' pay at pro rata rate account reporting for service on his regular assignment and not used, less any compensation for such already allowed.
3. Carrier shall compensate H. J. Gammons in the amount of eight hours' pay at the time and one-half rate for service performed off his regular assignment, less any compensation for such already allowed.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 15, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At the time cause for this claim arose, Claimant H. J. Gammons was the regularly assigned occupant of a rest day relief position established pursuant to the provisions of Article 6, Section 1(e) of the Agreement. Tuesdays of each week this position was assigned at Longview, Texas from 3:59 P. M. until 11:59 P. M. March 31, 1964 fell on Tuesday.

There are three shifts at Longview, Texas providing continuous service around-the-clock seven days per week. The shifts change at 7:59 A. M., 3:59 P. M. and 11:59 P. M. On March 31, 1964, the third trick operator, R. J. Bates, notified the Carrier that he would be unable to protect his position which had a starting time of 11:59 P. M. The Carrier, for some reason or another, decided to use Claimant Gammons to fill this position and to use Operator L. L. Smith, regular second trick operator idle on rest day, to fill the second trick beginning at 3:59 P. M. It was unable to contact Claimant Gammons prior to 3:59 P. M. and he showed up at his work location a few minutes prior to the

"You will be allowed one call, two hours at time and one-half for reporting for work on March 31, 1964, and not being used. Mr. J. M. Knox, Agent at Longview who will receive a copy of this letter will arrange allow you this call.

Your claim as presented, for one day, is declined."

The Claimant was allowed two hours at punitive rate for reporting for duty in addition to the eight (8) hours for service performed on third trick, 12:00 MN to 8:00 A. M.

(Exhibits not reproduced.)

OPINION OF BOARD: H. J. Gammons held a regularly assigned relief position on the second trick at Longview, Texas. On March 31, 1964, the third trick operator, R. J. Bates, notified Carrier that he was unable to report for work. Carrier made unsuccessful efforts to inform Mr. Gammons not to report for his scheduled second trick, but instead to work the third trick in place of Mr. Bates. When Mr. Gammons appeared for work at his second shift reporting time, he was notified that he would not be used on his regular assignment and was told to report for work at 11:59 P. M. starting time of the third trick. He worked the third trick, for which he was paid at the pro rata rate. Claim was filed for eight hours pay because he reported for work on the second trick and was not used. Mr. Gammons was allowed compensation for two hours at the time and a half rate but requests eight-hour pay at the pro rata rate and also seeks compensation for eight hours at time and a half rate for service performed on the third shift because he worked outside the hours of his regular assignment.

Carrier contends that the claim should be dismissed because it was amended on appeal to Carrier's highest officer to include a request for time and a half rate of pay on the third trick in addition to the claim for one day's pay at pro rata rate for not being used on the second shift. Such an amended claim, it maintains, is in violation of Article V of the National Agreement of August 21, 1954.

Carrier also states that Article 8 is applicable in this dispute. In accordance with this Article it asserts that Mr. Gammons, as a regularly assigned employe, performed emergency work and was properly paid the rate of the position on which he worked. In addition, he was allowed a "call" as a matter of equity even though every reasonable effort was made to contact Claimant so that he would not report for the second shift.

With reference to the contention that the claim be barred because it was amended substantially, we find that the alleged violation that Mr. Gammons was improperly compensated as set forth in Part 1 of the claim is the same as that contended on the property. The claim in Part 2 for compensation for eight hours pro rata rate for reporting and not being used on his regular shift assignment is also the same money claim made on the property. The claim in Part 3, however, is an amendment, an additional monetary demand, and therefore is barred by Article V of the National Agreement. Parts 1 and 2 of the claim are properly before this Board.

In resolving this dispute it is necessary to examine Carrier's interpretation of Article 8. It reads as follows:

"ARTICLE 8. RELIEF WORK.

(a) Regularly assigned employes (not including regularly assigned relief employes) will not be required to perform relief work

except in cases of emergency. When required to perform such service they shall receive the rate of the position upon which relieving or the rate of the position from which taken, whichever is the greater.

If any such employe would receive time and one-half rate through the application of Article 6 on any day such service is performed, the time and one-half rate shall apply. Such employes will be allowed actual necessary expenses while away from their regularly assigned station.

(b) Extra telegraphers, who have performed initial service, transferred to another position on the same seniority division by proper authority, will be paid at rate of One Dollar and thirty-nine cents (\$1.39) per hour for the actual time consumed in traveling to the position, subject to a minimum of three (3) hours and maximum of eight (8) hours, at pro rata rate in each twenty-four (24) hour period. This will not apply when one extra man relieves another."

Carrier interprets the purpose of the parenthetical clause in this Article only to distinguish between how a regularly assigned employe and a regularly assigned relief employe may be used. It reads this Article to mean that a regularly assigned operator may only be required to perform relief work in cases of emergency and that he be compensated at the rate of the position he is relieving or at the rate of his regular position, whichever is greater. The parenthetical clause, it argues, is to exempt the regularly assigned relief employe from this restriction so that Carrier may assign him to do relief service whether or not an emergency exists. We find, however, that the parenthetical clause in Article 8 eliminates the application of this rule to Mr. Gammons because it specifically exempts regularly assigned relief employes. Since Mr. Gammons was diverted from his regular assignment, Article 6, Section 4 is applicable, for it guarantees one day's pay within each twenty-four hours if the employe is ready for service and not used.

For the foregoing reasons we hold that the Agreement was violated and Mr. Gammons is awarded compensation in the amount of eight hours' pay at pro rata rate less compensation of three hours which he already received.

FINDINGS: The Third Division of the Adjustment Board, 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.

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