



Award No. 16528
Docket No. TE-15195

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

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

1. On June 11, 1963 Carrier failed to call W. H. Dodson, who was senior and available, to work Job No. 64 at "AB" Office, Indianapolis, Indiana, from 5:00 P. M. to 12:00 Midnight and instead used junior employe R. D. Kraemer.
2. Carrier shall compensate W. H. Dodson for seven (7) hours at time and one-half rate for June 11, 1963.

EMPLOYEES' STATEMENT OF FACTS: On June 11, 1963, Mr. M. R. Williams, who was the regular assigned occupant of Job No. 64 at "AB" Office in Indianapolis, Indiana, laid off from his regular assigned job to perform business for The Order of Railroad Telegraphers. Job No. 64 began work at 4:00 P. M. and terminated at 12:00 Midnight.

At about 5:00 P. M., Mr. W. H. Dodson, who was chief operator, asked the wire chief Mr. D. E. Fenton how Job No. 64 was going to be filled and was told that the office manager had ordered the position (Job No. 64) to be blanked for the day.

At about 6:30 P. M. on June 11, 1963, it became necessary for the Carrier to fill Job No. 64. The man standing for the extra work at that time and senior was Mr. W. H. Dodson. Instead of using Mr. Dodson, the Carrier called R. D. Kraemer.

Mr. Dodson turned in a time slip for seven hours at time and one-half rate because he was not used. The claim was appealed to the highest officer and declined by him. Claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute dated February 1, 1962, a copy of which is on file with your Board, and by this reference is made a part hereof.

The following telegrapher assignments in Carrier's "AB" Telegraph Office, located in the Big Four Building, Indianapolis, Indiana, are involved in this dispute:

Job No.	Incumbent	Job Assigned To Work Per Week	Assigned Hours	Relief Days
64	M. R. Williams	7 days	4:00 PM-12:00 AM	Sun&Mon
60	W. H. Dodson	5 days	9:00 AM- 5:00 PM	Sat&Sun
70	R. D. Kraemer	7 days	12:00 AM- 8:00 AM	Tues&Wed

On Tuesday, June 11, 1963, Mr. Williams, assigned to Job No. 64, laid off, and due to a severe storm in the area earlier in the afternoon, which caused a majority of the printer circuits to be out of service at the starting time of the job, it was decided it would not be necessary to fill the job. Later in the evening, however, considerable work had accumulated in the office and, since the printer circuits were then back in service, it was necessary to call an operator for the job. Mr. Kraemer, who was on the first of his relief days and who would have stood to work the job had it been filled at the regular starting time of 4:00 P. M., was called and worked from 6:30 P. M. to 12:00 midnight—5½ hours. For his tour of duty he was paid eight hours at punitive rate, as required by schedule rules.

Since the operators in "AB" Telegraph office are not required to perform any work pertaining to or affecting train movements, they are not subject to the provisions of the Federal Hours of Service Law. Therefore, Operator W. H. Dodson, as the senior available operator at the time Operator Kraemer was called for the vacancy, progressed claim for seven hours at punitive rate—the amount of time he was available for the vacancy after completing his regular assignment at 5:00 P. M.

Upon appeal of claim to the level of the undersigned, Carrier offered to pay claimant 5½ hours (actual time the assignment was worked) at pro rata rate as a complete settlement, but this offer was rejected by the Organization.

OPINION OF BOARD: Carrier acknowledges that remuneration is due Claimant, but differs on the number of hours and the appropriate rate. The Employees seek 7 hours at time and one-half. Carrier contends that 5½ hours at pro rata pay is due.

Pay for 5½ hours is required, pursuant to Article 7(b) of the Agreement, since that is the time actually worked by the employee used. In accordance with Article 7(b), as well as with Award No. 16254 between the same parties, time and one-half is the proper rate.

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.

AWARD

Claimant shall be paid for 5½ hours at time and one-half.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1968.