Award No. 16918
Docket No. TE-16082

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Pacific Lines), that:

CLAIM NO. 1

1. The Carrier violated the terms and intent of the current Telegraphers' Agreement when it required D. B. Hatch, Relief Agent-Telegrapher, Westwood, California, to perform relief work as agent-telegrapher, Susanville, California, June 26 to July 5, 1963, inclusive, when no emergency as defined under Rule 9 existed and did not pay him under applicable rules and at applicable rates for this service.

2. As a consequence of these violations, the Carrier now shall be required to:

(a) Make D. B. Hatch whole under Rule 9 in accordance with Carrier's contention that this was emergency service by paying him actual necessary expenses while away from his regular assigned stations, and at the straight time rate of his regular assigned position for all time consumed in traveling to and from the position relieved (with a maximum of eight (8) hours' travel pay in each twenty-four hour period), both as presented by him; and by paying him the difference between the earnings of his regular assigned position and his earnings as agent-telegrapher, Susanville, June 26 to July 5, 1963, inclusive, exclusive of expenses and travel time.

NOTE: In accordance with District Chairman Ward's letter dated September 6, 1963, reference to Superintendent's File 013-252, it was determined in conference between Mr. Ward and Mr. Degroot, Chief Timekeeper, that Claimant Hatch was made whole and fully paid in accordance with Rule 9 as requested in paragraph 2(a) above.

(b) After Mr. Hatch has been made whole in accordance with (2) above, then compensate him as follows in accordance with this Organization's contention that this was non-emergency service, taking credit for the amount already paid to him for each date:

Wednesday and Thursday, June 26 and 27: Eight (8) hours overtime rate of agent-telegrapher, Susanville, for service performed off assignment, no emergency, on an assigned rest day of his regular assigned position.

Friday, June 28: Seven (7) hours pro rata rate third telegrapher-clerk-towerman, Wendel, California, as the guarantee of his regular assigned position; **plus** eight (8) hours regular rate of agent-telegrapher, Susanville, for service performed off assignment, no emergency.

Monday and Tuesday, July 1 and 2: Seven and one-half (7½) hours pro rata rate second telegrapher-clerk, Westwood, California, as the guarantee of his regular assigned position, **plus** eight (8) hours regular rate agent-telegrapher, Susanville, service performed off assignment, no emergency.

Wednesday, July 3: Eight (8) hours overtime rate of agent-telegrapher, Susanville, for service performed off assignment, no emergency, on a rest day of his regular assigned position.

Thursday, July 4: A holiday – eight (8) hours pro rata rate agent-telegrapher, Susanville, holiday compensation.

Friday, July 5: Seven (7) hours pro rata rate third telegrapher-clerk-towerman, Wendel, as the guarantee of his regular assigned position; **plus** four (4) hours regular rate agent-telegrapher, Susanville, for making of agency transfer.

(Organization File: BU 9851-53)
(Committee File: C.578.3)
(Carrier File: TEL 61-314)

CLAIM NO. 2

1. Carrier violated the provisions of the Telegraphers' Agreement, Rules 3, 5 and 15, on October 11, 12, 14, 17, 18, 19, 20, 21, 1963, at Bisbee Junction, Arizona, when regularly assigned employe, relief position, Douglas, Arizona, was required to perform service on other than his regular assigned relief position under conditions which did not constitute an emergency.

2. Claim in behalf of H. H. Stemple, regularly assigned traveling relief position, headquarters Douglas, Arizona, whose assigned hours are as follows:

Thursday and Friday, telegrapher-ticket clerk-cashier, Bisbee, 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M.

Saturday, agent-telegrapher, Bisbee Junction, 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M.

Sunday and Monday, first telegrapher-clerk, Douglas, 7:00 A. M. to 12:00 Noon and from 1:00 P. M. to 4:00 P. M.

Tuesday and Wednesday, rest days, for additional compensation as follows:

Eight (8) hours at the pro rata rate applicable for telegrapher-ticket clerk-cashier, Bisbee, Arizona for each date October 11, 17 and 18, 1963.

Eight (8) hours at the pro rata rate applicable for agent-telegrapher, Bisbee Junction, Arizona for each date October 12 and 19, 1963.

Eight (8) hours at the pro rata rate applicable for first telegrapher-clerk, Douglas, Arizona, for each date October 14, 20 and 21, 1963.

(Organization File: BU 9845-53)
(Committee File: K.397.3)
(Carrier File: TEL 61-341)

CLAIM NO. 3

1. Carrier violated the provisions of the Telegraphers' Agreement, Rules 3, 5 and 15, on July 11 and 12, 1962, at Los Banos, California, when it required R. J. Roup, regularly assigned Relief No. 13, to work off his regular assignment under conditions which did not constitute an emergency.

2. Claim in behalf of R. J. Roup, regular assigned Relief Position No. 13, whose headquarters at Chowchilla, and whose assigned hours are as follows:

Tuesday	3rd Teleg.-Clk.	Los Banos	11:00 P. M.–7:00 A. M.
Wednesday	3rd Teleg.-Clk.	Los Banos	11:00 P. M.–7:00 A. M.
Thursday	3rd Teleg.-Clk.	Chowchilla	11:00 P. M.–7:00 A. M.
Friday	3rd Teleg.-Clk.	Chowchilla	11:00 P. M.–7:00 A. M.
Saturday	Agent-Teleg.	Chowchilla	7:00 A. M.–3:00 P. M.
Sunday	Rest Day		
Monday	Rest Day		

for eight (8) hours at the pro rata rate of his regular assignment third telegrapher-clerk, Los Banos, July 11, 1962; and eight (8) hours at the pro rata rate of his regular assignment third telegrapher-clerk, Chowchilla, July 12, 1962. Rate $2.5953 per hour.

(Organization File: BU 8916-53)
(Committee File: E.589.3)
(Carrier File: TEL 61-253)

CLAIM NO. 4

1. The Carrier violated the provisions of the Telegraphers' Agreement, Rules 3, 5, 9 and 15, on December 21, 1962, at Watsonville Junction, California, when F. F. Kinisky, a regularly assigned employe, Relief Position 20, was required to perform work outside the hours of his regular assigned position under conditions which did not constitute an emergency.

2. Claim in behalf of F. F. Kinisky, regular assigned Relief Position No. 20, Watsonville Junction, California, whose assigned hours are at Watsonville Junction as follows:

Friday	3rd Wire Chief-Telgr.-Clerk	12:00 MN – 8:00 A. M.
Saturday	1st Wire Chief-Telgr.-Clerk	8:00 A. M.– 4:00 P. M.
Sunday	1st Wire Chief-Telgr.-Clerk	8:00 A. M.– 4:00 P. M.
Monday	2nd Wire Chief-Telgr.-Clerk	4:00 P. M.–12:00 MN
Tuesday	2nd Wire Chief-Telgr.-Clerk	4:00 P. M.–12:00 MN
Wednesday	Rest Day	
Thursday	Rest Day	

for eight (8) hours' pay at the pro rata rate of his position at Watsonville Junction for December 21, 1962.

(Organization File: MU 8905-53)
(Committee File: G.593.3)
(Carrier File: TEL 61-276)

CLAIM NO. 5

1. Carrier violated the provisions of the Telegraphers' Agreement, Rules 3, 5 and 15 on August 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31 and September 1, 1962, at Colton, California, when it failed and refused to properly compensate L. G. Cundiff, regular assigned wire chief-telegrapher-clerk PMO, Relief Position No. 16, Colton, California, after it had required him to work off his regular assignment under circumstances which did not constitute an emergency.

2. Claim in behalf of L. G. Cundiff, regular assigned Relief Position No. 16, all at Colton, California, whose assigned hours are:

Thursday	3rd W/C Telegrapher-Clerk-PMO	11:00 PM–7:00 AM
Friday	3rd W/C Telegrapher-Clerk-PMO	11:00 PM–7:00 AM
Saturday	1st W/C Telegrapher-Clerk-PMO	7:00 AM–3:00 PM
Sunday	1st W/C Telegrapher-Clerk-PMO	7:00 AM–3:00 PM
Monday	2nd W/C Telegrapher-Clerk-PMO	3:00 PM–11:00 PM

Tuesday and Wednesday: Rest Days.

for an additional eight (8) hours' pay at pro rata rate for each date August 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31 and September 1, 1962, paid for but not worked, account work-

ing off his regular assignment; for eight (8) hours at the overtime rate for each date August 22, 29 for the rest days of his own assignment, less any amount already paid for those dates.

(Organization File: BU 8909-53)

(Committee File: I.543.3)

(Carrier File: TEL-61-260) NOTE: Incorrectly listed as TEL 61-242 in November 22, 1965 Advance Notice.

CLAIM NO. 6

1. Carrier violated the provisions of the Telegraphers' Agreement, Rules 3, 5, 9 and 15, on March 12 and 13, 1963, at Guadalupe, California, when it failed and refused to properly compensate S. A. Free, regular assigned manager-wire chief-telegrapher-clerk, San Luis Obispo, California, when it required him to work off his regular assignment under circumstances which did not constitute an emergency.

2. Claim in behalf of S. A. Free, regularly assigned manager-wire chief-telegrapher-clerk, San Luis Obispo, California, whose assigned hours are from 8:00 A.M. to 4:00 P.M. daily, Monday through Friday, with rest days Saturday and Sunday, for eight (8) hours per day at the pro rata rate of manager-wire chief-telegrapher-clerk, San Luis Obispo, paid for but not worked for March 12 and 13, 1963.

(Organization File: BU 9865-53)

(Committee File: G.596.3)

(Carrier File: TEL 61-288)

EMPLOYES' STATEMENT OF FACTS:

I. STATEMENT OF THE CASE

The basic and underlying cause for these claims stems from a contention of the Employes that Carrier has engaged upon a "no hiring" campaign in 1961 with the end result that the complement of extra employes required to perform relief service on vacancies due to various causes (vacation, illness, military service, leave of absence, etc.) is far short of that needed, whereby Carrier is repeatedly diverting regular employes from their regular assignments and causing them to perform relief service under the guise of "emergency."

Rule 15 of the parties' Agreement reads as follows:

> "Employes shall not be required to suspend work during regular hours or to absorb overtime."

Rule 9 of the parties' Agreement confirms the non-removal principle of diverting regularly assigned employes for relief work under Rule 15, but makes an exception thereto in bona fide cases of emergency. This Rule 9

Copies of the correspondence exchanged between the parties during the handling of these claims on the property are attached as:

Exhibit "A" covering Claim No. 1
Exhibit "B" covering Claim No. 2
Exhibit "C" covering Claim No. 3
Exhibit "D" covering Claim No. 4
Exhibit "E" covering Claim No. 5
Exhibit "F" covering Claim No. 6

(Exhibits not reproduced.)

OPINION OF BOARD: This case consists of six separate claims, five of which involve an interpretation of Rule 9, the emergency relief rule, which in pertinent part reads as follows:

"RULE 9.

REGULAR ASSIGNED EMPLOYES PERFORMING RELIEF WORK

Regular assigned employes shall not be required to perform relief work except in cases of emergency. * * *

* * * * *

* * * * *"

In Claims 1, 4, 5 and 6, temporary relief service was performed because of the illness of the employe to be relieved. No extra men were available. We can see no substance to the argument that unforeseen illness of an employe does not constitute an emergency as envisioned by the above cited rule. An emergency did exist, and Carrier was correct in its action. We will deny Claims 1, 4, 5 and 6.

In Claim No. 2, the Organization's District Chairman took time off to handle Organization business, giving Carrier a two-day notice. Again, there were no extra men available. Due to the shortage of the notice given, we hold that this situation constituted an emergency as envisioned by Rule 9. We will deny Claim No. 2.

Claim No. 3 does not involve emergency service. A regularly assigned employe was required to work on other than his assigned position during his regularly assigned hours. The claim is for dual compensation. Petitioner has based this claim on the Guarantee Rule. A review of the record, insofar as this claim is concerned, convinces us that the contracting parties never intended dual compensation in this type of situation. The interpretation given this rule over the years dictates a decision contrary to that demanded by the Organization. We will deny Claim No. 3.

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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.

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