

Award No. 16992
Docket No. TE-16045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on The Pennsylvania Railroad that Extra Block Operator C. D. DiGiorgio is entitled for claim submitted to eight (8) hours at the pro rata rate and additional eight (8) hours at the time and one-half rate for working two (2) positions in "A" Tower on Sunday, December 1, 1963. The facts are that Extra Block Operator was ordered to work as Telegrapher at "A" Tower, 3:00 P.M. to 11:00 P.M. on Sunday, December 1, 1963, after he started to perform service as a Telegrapher, he was ordered by the Movement Bureau to relieve the regular Leverman in "A" Tower and work the Leverman's position. After performing service as a Leverman, he was ordered to return to the Telegrapher's position. The Claimant was paid eight (8) hours at the pro rata rate of the Leverman's position, the highest rate, it is requested that he be paid an additional eight (8) hours at the time and one-half rate for working two (2) positions in accordance with Regulation 4-D-1, 4-F-1(c) and Award 4681.

EMPLOYEES' STATEMENT OF FACTS: Claimant, a Group 2 employee, was an extra block operator. On the claim date, he was called to work the second shift telegrapher position at "A" Tower, New York City, from 3:00 P.M. until 11:00 P.M. He started work on that position at the time required. At 3:59 P.M., he was directed to leave the telegrapher position and assume the duties of the leverman position in the same tower. He did so. At 4:30 P.M., he was directed to, and did, return to the telegrapher position on which he had started and remained there until 11:00 P.M.

On the basis of his interpretation of the Agreement rules, Claimant submitted time claims for service performed on the claim date:

- (1) eight hours at the pro rata rate for his initial service on the telegrapher position,
- (2) eight hours at the time and one-half rate for service on the leverman position, and
- (3) eight hours at the time and one-half rate for service after returning to and completing the tour of duty of the telegrapher position.

Following discussion of the claim at the regular monthly meeting, denial of the claim by the Superintendent, Personnel and rejection thereof by the District Chairman, TCU, a Joint Submission, a copy of which is attached as Exhibit A, was prepared for progression of the dispute to the General Chairman, TCU, and the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property.

The Manager, Labor Relations denied the claim in a letter dated February 24, 1965, a copy of which is attached as Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of the Employees' claim the question to be decided by your Board is whether Regulation 4-F-1 (c), the only rule of the applicable Schedule Agreement cited by the Employees as directly supporting their claim, is applicable to the claim in this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a Group 2 employee, was an extra block operator, when on the day specified in the Claim he was called to work the second-shift telegrapher position at "A" Tower, New York City from 3:00 P.M. until 11:00 P.M. He started to work on that position, but at 3:59 P.M. was ordered to leave the telegrapher position to assume the duties of the leverman position in the same tower. At 4:30 P.M., he was ordered to, and did, return to the telegrapher position on which he had started and remained there until 11:00 P.M.

Claimant submitted a claim for eight hours at the pro rata rate for his initial service on the telegrapher position, eight hours at time and a half for service on the leverman position, and eight hours at the time and a half rate for service after returning to and completing the tour of duty of the telegrapher position.

Carrier paid Claimant eight hours at the pro rata rate of the Leverman's position, and because of the District Chairman's understanding of the rules and the Agreement, the latter part of the claim was progressed for 8 hours at time and a half for working two positions in accordance with Regulations 4-D-1, 4-F-1(c) and Award 4681. The eight hours already paid was at the highest rate of the two positions. Regulation 4-D-1 provides:

"4-D-1. Except as otherwise provided in Regulation 4-E-1, the regularly assigned hours, as established from time to time shall constitute a day's work for Group 1 positions.

Except as otherwise provided in Regulation 4-E-1, eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work for Group 2 positions at offices where only one Group 2 shift is worked. At offices where more than one Group 2 shift is worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work for Group 2 employees."

The language of the above cited regulation is clear, concise, and unambiguous. It is not susceptible to misinterpretation as we view it. It simply establishes the number of hours constituting a work day, and is not, in our judgment, particularly germane to the issue at hand.

Regulation 4-F-1(c) provides:

"4-F-1. (c) If an employe performs work on two positions within a twenty-four (24) hour period and, under any provisions of this Agreement, he has a prior right to be used in both of such positions, he shall be paid at the straight time rate for the first eight (8) hours of service on each position. Except as otherwise provided in paragraph (b) of this regulation (4-F-1), he shall be paid at the rate of time and one-half for time worked in excess of eight (8) hours on either position so worked.

A relief employe performing work on two positions of his assignment within a twenty-four (24) hour period shall be paid at the straight time rate for the first eight (8) hours of service on each position. Except as otherwise provided in paragraph (b) of this regulation (4-F-1), he shall be paid at the rate of time and one-half for time worked in excess of eight (8) hours on either position so worked."

Paragraph (b), referred to above, is not applicable to this case; hence, requires no words of explanation.

The parties and the issue were presented to this Board in Award 4681 (Stone), in which the position of the employes was sustained. Further, Petitioner has presented substantial evidence demonstrating their position has effectively been adopted by the Carrier, when the latter has settled claim identical to the instant one on the property, thus showing a mutual interpretation of the contract language to be precisely that which the Organization has contended throughout this record. 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1969.

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