

**Award No. 16994**

**Docket No. TE-16190**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Texas and Pacific Railway, that:

1. Carrier violated the Agreement when on September 16, 17 and 18, 1964, it required regularly assigned Agent-Telegrapher Vernon Wester to perform part time agency service at Marthaville and Robeline, Louisiana.

2. Carrier shall allow Claimant Wester eight hours pay at the straight time rate of the Marthaville, Louisiana agent-operator position and an additional eight hours' pay at the straight time rate of the Robeline, Louisiana agent-operator position on each of the dates of September 16, 17 and 18, 1964, less compensation already allowed, if any.

**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.

Among the provisions of the Agreement applicable to this dispute are the following:

**"ARTICLE I.**

**SCOPE.** (a) This agreement will govern the working conditions and compensation of agent-telegraphers, agent-telephoners, telegraphers, telephone operators (except switchboard operators), towermen, levermen, tower and train directors, block operators, managers (except GO-Dallas), wire chiefs, wire chief telegraphers, operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices; staffmen, agents (freight and ticket) except those listed in Paragraph (b) of this Article, assistant agents (freight and ticket), where they have charge of a station, take the place of or perform the work of an agent, and all others named in the wage scale hereinafter referred to as employees.

\* \* \* \* \*

4. Agent-Telegrapher Vernon Wester, the claimant herein, was assigned to the station at Marthaville and the instructions required him to make one trip daily to Robeline until an extra telegrapher became available. The claimant resided in Provencal, which is east of Robeline.

The assigned hours of the agency at Robeline was 7:30 A.M. to 4:30 P.M. with one hour for lunch. Claimant's assigned hours at the agency at Marthaville were 8:00 A.M. to 5:00 P.M., with one hour for lunch. When claimant received the instructions from the chief dispatcher to make a daily trip to Robeline, he arranged to protect the work by leaving home at Provencal stopping first at Robeline, since he had to drive through Robeline on the way to Marthaville. He would perform the necessary work at Robeline and and drive the additional miles to Marthaville. He then left Marthaville prior to his normal quitting time and stopped at Robeline on the way home. The hours which he set for himself were 8:00 A.M. to 10:00 A.M. at Robeline and then continue on to Marthaville. He would return to Robeline at 4:00 P.M. and leave for home at 5:00 P.M., his normal quitting time.

5. Although claimant had to drive through Robeline to Marthaville to protect his normal assignment and was not required to drive any additional mileage, claimant was, nevertheless, allowed mileage for the use of his automobile at the rate of 7¢ a mile for the eight highway miles between Robeline and Marthaville. He was allowed the eight miles for each direction or sixteen miles a day, or a total of forty-eight miles for the three days for which claim is made, Wednesday, Thursday and Friday, September 16, 17 and 18, 1965.

6. In addition, the hourly rate of the agency at Robeline was \$2.5848 per hour and the rate at Marthaville was slightly less, or \$2.5128. Claimant was allowed the difference between the two rates for the full eight hours for each of the three days and was paid an additional \$1.73, representing the differences in the earnings of the two positions for the three days involved.

7. A claim was presented on behalf of the Agent at Marthaville for eight hours' pay at the straight time rate of the agency at Robeline in addition to the straight time rate of claimant's regular position at Marthaville, less the compensation already allowed. The claim ceased when Extra Operator B. E. Tonkinson became available and protected the Robeline agent-operator position, beginning September 21, 1964.

8. Although no rule is cited in the Employees' Statement of Claim as filed with your Board, the Employees took the position in handling the claim on the property that the use of the agent at Marthaville was, in effect, a dualization of two stations without an agreement. The claim was presented and appealed on the property in the usual manner. The claim was denied on the basis of Article 8 of the basic agreement and the awards of your board which recognize the right of the Carrier to utilize regularly assigned employees in emergency situations as in this case.

**OPINION OF BOARD:** The facts concisely stated in this case are that the Agent at Robeline, Louisiana notified the Carrier on July 20, 1964 that he was going to retire from his position effective September 16, 1964. The date of such notice was July 20, 1964. On September 16, 17 and 18, there were no extra or other relief employees available to perform the work of that position. Confronted with this situation, Carrier required the Claimant, agent at Marthaville, to go to Robeline and perform the necessary work in addition to his own job. He worked eight hours per day and was compensated at the higher

rate of the two positions. Claimant submits that he should be compensated at eight hours straight time for each position worked, based on the Guarantee Rule (Art. 6. Sec. 4), the Basic Day Rule (Art. 5(a)), and the Suspend Work Rule (Art. 5(i)).

Carrier defended and declined the claim averring that its action was justified and authorized by Article 8(a) of the Agreement. They state that since there were no extra or other relief employees available, this in substance constituted an emergency, thus permitting them to assign Claimant to both jobs. The pertinent portion of that Article provides:

"ARTICLE 8.

Relief work. (a) Regularly assigned employees (not including regularly assigned relief employees) will not be required to perform relief work except in cases of emergency." \* \* \*

As we view the facts in this case, Carrier had almost two months notice to prepare for the contingency it ventually faced. We cannot subscribe to the theory that the absence of extra or relief man in this case was tantamount to an emergency. Carrier had more than ample time within which to preclude a situation from developing which required Claimant to assume both positions. The Agreement has been violated and 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 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**

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.