

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21652
Docket Number CL-21504

David C. Randles, Referee

(Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ **Express and Station Employees**
PARTIES TO DISPUTE: (
(**Texas and Pacific Railway Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8021) that:

1. **Carrier** violated the Clerks' Rules Agreement, and in particular **Rule 25(a) and (f)** of the Agreement, when, on **February 8, 1974**, it failed and refused to compensate Mr. E. O'Con for his **time, and services** rendered (Carrier's file X02-157).

2. Carrier **shall** now be required to compensate Mr. O'Con for three hours at the pro rata rate of his Telegrapher's position, **Marshall, Texas, for February 8, 1974.**

OPINION OF BOARD: Claimant E. O'Con, a regularly assigned C.T.C. Telegrapher Operator No. **012, Marshall, Texas**, having assigned hours of 12 midnight to **8:00 A.M.**, Sunday through Thursday, and regularly assigned rest days of **Friday and Saturday**, completed his work day at **8:00 A.M.** on February 8, 1974 and was released from duty. Claimant went home, went to bed and was asleep when a **Road Foreman of Engines telephoned** claimant awaking him and requested information regarding **engine** trouble on No. **123's** connection at **Marshall, Texas** on February 7, 1974.

Since **Carrier** officer utilized claimant's time to secure information from him while he was off duty, at home, and asleep, Mr. O'Con filed a claim for payment pursuant to **Rule 25(a) and (f) of the Agreement.**

"(a) Except as otherwise herein provided, time excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the minute basis **at** the rate of time and one-half."

"(f) **Employees** notified or called to perform work not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis."

The question, then, before this Board is whether or not a telephone **call** to an **employee, requesting** information relative to his job while he is at home, constitutes work. **Rule 25(a)** provides for payment for overtime work continuous with the **employee's** assigned hours, and **Rule 25(f)** provides for payment for work not continuous with the **employee's** assigned work day. In this matter, **25(f)** is the rule which this Board deems applicable.

The Carrier on the property stated in each of its declarations of the claim that the claimant "did not provide any service" to the Carrier.

If the **Rule 25(f)** contained the word "**service,**" then the Board would consider the concept of service relative to a telephone **call**; however, **Rule 25(f)** specifically uses the word "work" which implies returning to his assignment to perform work.

The Organization cites numerous awards to support the claim which we do not feel are exactly relevant in that they refer to service as it applies to investigations, etc.

Directly relative to the claim is Award 6107 in which the Board stated, "Answering a telephone to give information such as was done here does not come within the Rules of the Agreement as they are presently written." Numerous other awards of this Division support this interpretation of **Rule 25(f)**, and, therefore, on that basis, we shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and 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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; **and**

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at **Chicago**, Illinois, this 18th day of August 1977.