

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway that the call and overtime provisions of the telegraphers' Agreement on that property, apply to agent-telegrapher, M. D. Stayton, Salome, Arizona, when required to operate water pumps outside of his assigned hours."

STATEMENT OF FACTS.—

"Sunday December 22, 1935 and Christmas Day, December 25, 1935, and subsequent dates, agent-telegrapher, M. D. Stayton, regularly assigned six days per week (no Sunday or holiday assignment) at Salome, Arizona, rate of pay .73 per hour, was notified to perform water pumping service, outside of established hours. For such service, the application of the call and overtime provisions of the Telegraphers' Agreement were denied by the Carrier."

POSITION OF EMPLOYEES.—

"The following telegraphic correspondence between Agent Stayton and Superintendent Wilson:

"SALOME, ARIZ., Decm. 21, 1935.

"V. H. WILSON,
"Winslow.

"Account pumping plant Parker down and all four trains taking water Salome, they consuming during night around ten feet, town approximately two feet more, totalling around twelve feet. Capacity of tank sixteen feet. Will you therefore please authorize call to pump tomorrow Sunday Joint LMS VHW.

"M. D. STAYTON, Agent'.

"WINSLOW, ARIZ., Dec. 21, 1935.

"M. D. STAYTON,
"Salome.

"This will be your authority to take call to pump tomorrow if necessary to have supply of water H-184.

"V. H. WILSON, Supt."

"Agent Stayton therefore prepared his payroll accordingly and the following letter was received in response thereto:

"WINSLOW, Dec. 26, 1935.
"Y-43176

"Mr. M. D. STAYTON,
"Agent, Salome.

"DEAR SIR: With reference to your letter of December 25th, attached to your last half December payroll, in regard to claim for three hours pay at rate of 73¢ per hour covering pumping service performed on Sunday the 22nd and Christmas Day the 25th.

"I have eliminated this time from your payroll, as the allowance \$11.00 per month which you receive for pumping covers all service of this class which it may be necessary for you to perform.

"Please correct your copy of payroll accordingly.

"Yours truly,

"(Signed) V. H. WILSON.

"cc—L. M. SHIPLEY."

"At Salome and other stations additional compensation, varying in amounts, is paid the agent for operating water pumps; the extra compensation at Salome is \$11.00 per month. This practice apparently originated account of the pumping service not requiring a full time pumper and is extra compensation to the employe for performing such class of work; in the same manner as Western Union Commission and or in some instances express transfers. The payment of extra compensation for handling pumps is being made at many stations, some of which were the result of negotiations between the Order of Railroad Telegraphers and the Carrier—others were a matter of individual negotiation. The committee contends this extra compensation is allowable for the pumping service performed within the established hours and by no stretch of imagination could such compensation be considered as full compensation for all work performed outside of established hours, thus nullifying the call and overtime rules. If, as suggested by the Carrier, the extra compensation allowed covers all such work to be done regardless of established hours, no individual, class, or craft would be willing to thus sell their service, of a potential sixteen hours per day, for such a sum. We claim it is the intent that such work be done within the assigned hours of the employe, else the call and overtime rules apply.

* * * * *

"Agent-telegrapher M. D. Stayton was properly notified to work (performing pump service) on Sundays and or holidays, a less number of hours than constitutes a day's work within the limits of the week-days assignment, therefore, that part of Article 3, paragraph (3) of the Telegraphers' Schedule reading:

"When notified or called to work on Sundays and the above specified holidays, a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employes shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty."

is applicable and we are requesting it be so ordered."

POSITION OF CARRIER.—The Carrier contends that prior to and since the first agreement with the Telegraphers' Organization, they have never paid for such service as was here rendered on a call basis, when performed outside of assigned hours and no such claims have heretofore been presented.

The Carrier further contends that there does not exist a dispute which may be referred to the National Railroad Adjustment Board for decision; that the National Adjustment Board, Third Division, is not authorized under the Railway Labor Act to hear and decide this claim in Docket No. TE-387.

That the claim in Docket TE-387 is a request for an intended change in an agreement affecting rates of pay, rules, and working conditions, in the disposition of which the National Railroad Adjustment Board has neither voice nor authority.

That written notice of such intended change has not been given by The Order of Railroad Telegraphers as required by Article XXIII of Telegraphers' Schedule effective February 5, 1924, and in pursuance of the requirements of Section 6 of the Railway Labor Act amended, approved June 21, 1934.

That if and when proper notice of intended change in Telegraphers' Schedule, effective February 5, 1924, is given the Carrier and a dispute thereby created, which is not adjusted by the parties in conference, the subsequent procedure is set forth in section 5 of the Railway Labor Act amended, approved June 21, 1934, covering "Functions of Mediation Board."

OPINION OF BOARD.—Claim of the employes is submitted under paragraph (e), Article 3 of the existing agreement, which is shown to be applicable in this case.

The contention of the carrier that the claim of the employees is for a new rule, and therefore one not referable to the National Railroad Adjustment Board is without basis in fact.

Article 3 of the Telegraphers' Schedule Agreement reads:

"Hours of Service.

"(a) Except as specified in Section (f), eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two (2) or more shifts are worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work.

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

"(c) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes. Employees notified or called to perform work not continuous with the regular work period will 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 the minute basis.

"(d) Employees will not be required to suspend work during regular hours or to absorb overtime.

"(e) Employees will be excused from Sunday and holiday duties as much as the conditions of business will permit.

"Time worked on Sundays and the following holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation, shall be considered the holiday), shall be paid for at the regular hourly rate, when the entire number of hours constituting the regular week-day assignment are worked.

"When notified or called to work on Sundays and the above specified holidays, a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with overtime and call rules."

The question is whether the services performed in this case outside assigned hours entitle Agent Stayton to extra compensation under the foregoing rule. The Carrier contends that the \$11.00 per month paid this agent for pumping is payment in full for such service whether within or outside regular assigned hours. The Employees contend that this compensation is for such service during regular assigned hours and state:

"A bulletin advertising an agency position, in part reads, 'party bidding on this position must be qualified to handle usual duties of agent, with exception of telegraphing and will be required to handle pumping water during assigned hours.'"

Article 3 of the current Agreement specifies the number of hours constituting a day's work and provides the method of overtime payment for all service outside the regular working hours and nowhere in this Article or the other articles of the Agreement is there to be found any provision that Article 3 shall not apply to service performed by employees operating pumps.

It is shown that M. D. Stayton was required to perform water pumping service outside of assigned hours on the days in question; that there was telegraphic correspondence relating particularly to the question of an authorization for a call to pump on Sunday; that the result of this correspondence was a specific authorization by the superintendent for Employee Stayton to take the special call for pumping work on Sunday. This service was agreed to and performed outside of regularly assigned hours, and for the further reason that the entire procedure brought the situation within the call and overtime rules,

Employee Stayton is entitled to be compensated for the work done in accordance with the provisions of Article 3, paragraph (e) of the Agreement.

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

That in accord with provisions of paragraph (e), Article 3 of the Telegraphers' Agreement, the employee is entitled to compensation as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 22nd day of April, 1937.