

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers of the Southern Pacific Company, Pacific Lines, that Telegrapher E. J. Wilson be compensated for service performed on Sunday, February 21st, 1937 and Sunday, February 28th, 1937, in accordance with time slips he rendered the Carrier covering this service."

EMPLOYES' STATEMENT OF FACTS: "Telegrapher E. J. Wilson was assigned week day hours 6:00 P. M. to 2:00 A. M. February 21st, 1937, Wilson performed service as follows: 5:30 P. M. to 9:00 P. M., worked account protecting vegetable movement. Claimed time as follows:

"5:30 P. M. to 6:00 P. M. (30 minutes),	2 hours at time and one-half	\$2.0625
6:00 P. M. to 8:00 P. M. (2 hours),	2 hours at time and one-half	2.0625
8:00 P. M. to 9:00 P. M. (1 hour),	1 hour at pro rata	.6875
		<u>\$4.8125</u>

"February 28th, Telegrapher Wilson worked and claimed:

"First call, 1:15 P. M. to 1:40 P. M.,	2 hours at time and one-half	\$2.0625
Second call, 5:40 P. M. to 11:00 P. M.:		
5:40 P. M. to 6:00 P. M.,	2 hours at time and one-half	2.0625
6:00 P. M. to 8:00 P. M.,	2 hours at time and one-half	2.0625
8:00 P. M. to 11:00 P. M.	3 hours at pro rata	2.0625
		<u>\$8.2500</u>

"Time slips were rendered on this basis."

An agreement bearing date of September 1, 1927, (Wage Scale effective May 1, 1927) is in effect between the parties.

POSITION OF EMPLOYES: "Exhibits 'A' to 'J' are attached to and made a part of this brief.

"Conferences held on January 3rd, 1938 and May 2nd, 1938.

"The claim is based upon Rules 6 and 16:

'RULE 6

Sunday and Holiday Work

(a) Telegraphers will not be required to work on holidays, except when necessary to protect the Company's interests.

and Holiday Rule (Rule 6) does not apply in a case of this kind, as has been proven by our analysis of that rule, it is conclusive evidence that Telegrapher Wilson has been correctly paid for service performed under the controlling provision of Agreement, namely, Rule 16 (a).

"Carrier directs attention to the fact that the position of Petitioner, if sustained, (we contend that it should not be sustained under the Rules) would have the effect of doubling up on the time and one-half allowance; for example, taking service performed by claimant on February 21st—For a period of 2½ hours actually worked 5:30 P. M. to 8:00 P. M., claimant would receive 4 hours at time and one-half, which, we feel sure Board will agree, is not contemplated under Agreement when a telegrapher performs continuous service. Under certain conditions, however, coupling Rule 6 (c) with either Rules 16 (a) or 16 (b) would result in telegraphers receiving less compensation than they would receive under Rule 16 (a); for example—a telegrapher assigned daily except Sundays and holidays from 6:00 P. M. to 2:00 A. M., if notified or called to work on a Sunday or holiday from 4:00 P. M. to 10:00 P. M., would receive, by coupling Rule 6 (c) with either Rule 16 (a) or 16 (b), 4 hours at time and one-half and 2 hours at the regular hourly rate, or the equivalent of 8 hours at the regular hourly rate, whereas under Rule 16 (a) he would receive 6 hours at time and one-half or the equivalent of 9 hours at the regular hourly rate. If worked until 11:00 P. M., the difference in favor of Rule 16 (a) would be 1½ hours at the regular rate per hour."

OPINION OF BOARD: The facts with respect to the claim are not in dispute. The parties, however, are in sharp conflict as to the rules of the Agreement which should be applied in determining the compensation to which the claimant is entitled for the extra service performed on the days involved.

The petitioner, in support of its position, relies upon Rule 6 (c) and Rule 16 (b). The former provides:

"When notified or called to work on Sundays and the above specified holidays" (the holidays specified in paragraph (b) of Rule 6) "a less number of hours than constitutes 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 latter provides:

"Telegrapher required to report for duty before assigned starting time and continues to work through his regular shift, shall be paid three (3) hours for two (2) hours' work or less, and time one-half thereafter on the minute basis for the time required to work in advance of his regular starting time."

The carrier asserts that neither rule relied upon by the petitioner has application to the present situation. "Rule 6 (c)," states the carrier, "provides how telegraphers shall be compensated when notified or called to work Sundays and specified holidays, within the limits of the regular week-day assignment, further specifying that 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 carrier further asserts that Rule 16 (b) has no application because "the claimant in this case had no assigned starting time on Sunday nor was he assigned to work a regular shift on Sunday, his position being a daily except Sunday and holiday assignment. . . ."

The carrier states that the only rule in the Agreement which can be applied to the situation under consideration is Rule 16 (a). This provides:

"Telegraphers 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. Each call to duty after being released will be a separate call."

The situation as presented by the respective contentions of petitioner and carrier reveals some ambiguity in the rules cited. The contention of each bears plausibility. The Division is, however, of the opinion that the construction urged by the petitioner must be accepted. The employe involved was called to work on a Sunday, and called for a less number of hours "than constitute a day's work within the limits of the regular week-day assignment." The reference in Rule 6 (c) to "regular week-day assignment" and to "time worked before or after the limits of the regular week-day assignment" rather than precluding the application of this paragraph to the situation under consideration, seems to compel it.

From the conclusion that Rule 6 (c) applies to the situation at hand, it follows that Rule 16 (b) is the rule under which the claimant should have been compensated for the services performed on the days involved with the exception of that portion of the services for which compensation is due under Rule 6 (c). This conclusion is based upon the clear nexus between the last sentence of Rule 6 (c) and paragraph (b) of Rule 16.

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 employe involved in this dispute are respectively carrier and employe 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 claimant was entitled to be compensated under Rules 6 (c) and 16 (b) for the services performed on the days involved in this dispute.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1939.