

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 Drawbridgetender-leverman L. E. O. Norris is entitled to pro rata rate of pay for the eight hours of his regular assignment on May 17th, 24th, 25th, 26th, 27th, 28th, 29th and 30th, 1937 and for service performed during the assigned hours of Drawbridgetender-leverman Clark, whom he was used to relieve, he is entitled to compensation at time and one-half rate."

EMPLOYEES' STATEMENT OF FACTS: "L. E. O. Norris was regularly assigned at Georgiana Slough, Sacramento Division, hours 2:00 P. M. to 10:00 P. M. On May 17th, 24th, 25th, 26th, 27th, 28th, 29th and 30th, he was required to work assigned hours of Drawbridgetender-leverman Clark, 6:00 A. M. to 2:00 P. M."

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

POSITION OF EMPLOYEES: "Exhibits 'A' to 'M' inclusive, are attached to and made a part of this brief.

"Conferences between representative of the Carrier and representative of the employees were held December 16th, 1937 and January 3rd, 1938.

"Claim is filed under Rules 5, 14, 15 and 16 of the agreement in effect between the parties to this dispute:

'RULE 5

Guarantee

Regular assigned telegrapher will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays.

A regular assigned telegrapher is one who is assigned to a position by bulletin.'

'RULE 14

Overtime

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.'

"Decision 680, United States Railroad Administration, deals with an employe on the Atlantic Coast Railroad, assigned from 9:30 A. M. to 6:30 P. M., who was taken from his assigned position to work on 4:00 P. M. to 12 Midnight trick due to the fact that the man who was temporarily sent to the station for the 4:00 P. M. to 12 Midnight trick, in the judgment of the Manager, not being competent for that assignment. The temporary man was placed on the 9:30 A. M. to 6:30 P. M. trick. This case does not involve circumstances analogous nor remotely similar to those involved in the present dispute, inasmuch as it has nothing whatsoever to do with the rearranging of hours of assignment due to the abolishment of a position.

"Decision 770, United States Railroad Administration, covers two telegraphers on the N. Y. C. & St. L. R. R., one assigned to second trick 3:00 P. M. to 11:00 P. M. and the other assigned to third trick, 11:00 P. M. to 7:00 A. M. The second trick telegrapher was required to work on first trick 7:00 A. M. to 3:00 P. M. and third trick telegrapher was required to work second trick from 3:00 P. M. to 11:00 P. M. For the same reason as expressed in connection with Decision 680, this Decision is not in point.

"Decision 1042, United States Railroad Administration: From the reading of this Decision, it is apparent that it does not cover a case involving the abolishment of a position and the rearranging of assigned hours of a remaining position to conform with the Rules. Conclusion drawn by Organization from this decision is of no consequence.

"Decision 2551, United States Railroad Labor Board, involves a case on the B. & O. R. R. where due to operator on second trick, 3:00 P. M. to 11:00 P. M. at Storrs being ill, first trick operator on 7:00 A. M.—3:00 P. M. shift continued through on second trick until 4:15 P. M. when he was relieved by a third trick operator who was assigned from 11:00 P. M. to 7:00 A. M. at another telegraph office in same terminal, account no extra operators available. This latter operator worked until 11:00 P. M. and claimed 8 hours at time and one-half for service performed 4:15 P. M. to 11:00 P. M. This case has no connection with the case we are discussing, as like other cases analyzed, it does not involve the abolishment of a position at a two-man station and rearrangement of hours of remaining position to meet the requirements of Agreement.

"Decision 3932, United States Railroad Labor Board, involving a case on the A. T. & S. F. Ry.: Assigned operator 4:00 P. M. to 12 Midnight trick, after completing trick was used following morning at 8:00 A. M. to relieve Agent who reported sick. Does not involve the rearranging of hours at a one-man station following the discontinuance of a position, therefore cannot be associated with claim under discussion.

"We submit that the instant claim should not be sustained under rules of Telegraphers' Agreement and respectfully request that same be denied."

OPINION OF BOARD: A fair interpretation of Rule 5, as urged by the petitioner, guarantees to a regularly assigned telegrapher a day's pay for his regularly assigned shift on all days except Sunday and holidays, if, of course, "he is ready for service and not used." The claimant is, therefore, entitled to the compensation claimed unless the requirement of Rule 5 is, as urged by the carrier, modified by Rule 9. This rule provides:

"Regularly assigned telegraphers will not be required to perform relief work, except in cases of an emergency and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations."

In the opinion of the Division, Rule 9 does modify Rule 5 as well as Rule 15 and Rule 16 on which the petitioner also relies in support of this claim. It is not denied that the claimant was in the circumstances of the present

dispute assigned to relief service. It seems equally clear that the assignment was made necessary by an emergency; the sickness of Clark, the unavailability of employees to fill the assignment, and the necessity of protecting the service during Clark's assigned hours. The petitioner states that Rule 9 applies only when an employee is sent away from his regularly assigned station to perform relief service. The rule does not so provide. The petitioner urges however, that the last clause of the first sentence of the rule—"and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations"—requires the conclusion urged. This does not follow. It is equally plausible to assume that this clause was inserted as an additional guarantee to the employee against monetary loss when sent from his regularly assigned station to perform relief service. It is clear that there is more hardship involved when an employee is sent away from his home station to perform relief service than when required to perform it at the station where he is regularly assigned. It is difficult to believe that the framers of these rules intended to compensate an employee more generously in the latter situation than in the former.

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 employee involved in this dispute are respectively carrier and employee 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 employee involved in this dispute was properly compensated under the rules of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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