Award No. 863
Docket No. TE-817

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—COAST LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that (a) the call and overtime provisions of the telegraphers' agreement on that property, apply to agent-telegrapher, Perris, California, when required to operate water pumps outside of his assigned hours, and that (b) 5¢ per mile be allowed for the use of privately owned automobile."

JOINT STATEMENT OF FACTS: "Agreement bearing date of February 5, 1924 and August 1, 1937 as to rules of working conditions and rates of pay, respectively, exists between parties to this dispute.

"In March, 1927 position of pumper rated $108.00 per month at Perris, California, was abolished, the duties transferred to the agent-telegrapher for which an arbitrary allowance of $11.00 per month was made.

"The location of the pump is two (2) miles distant from the railroad station.

"June 8, 1937, the agent-telegrapher received instructions dated May 28, 1937, that pump duties must thereafter be performed within assigned hours except if necessary to perform such duties on Sundays and/or holidays or outside of assigned hours, authority must first be secured."

POSITION OF EMPLOYES: "The following letter gives the history and background of the transfer of pumping duties from a regularly assigned pumper (not covered by the Telegraphers' Schedule) to the agent-telegrapher (under the Telegraphers' Agreement) at Perris, and is witnessed by the then section foreman Mr. John M. Bollin:

'Perris, California
February 18, 1938
File W-24

'Mr. J. L. Elliott, Gen. Chrmn.,
The Order of Railroad Telegraphers,
Suite 208 Columbian Bldg.,
Topeka, Kansas.

Dear Sir and Brother:

Referring to your letter of February 7th, file 14-238.

During 1927 when the Santa Fe abolished the $125.00 per month pumpers position at this station, they instructed me to handle the

transportation between the two points in the form of a speeder. He advised he already had a speeder and could use it if necessary. He declined the offer to furnish him one and did not use the one he had, no doubt because of the exertion necessary to propel the machine which is operated by man power. The use of other means of transportation, particularly the use of his privately owned automobile, has been for his own convenience and of his own free will.

"It is noteworthy that the committee is presenting claim for allowance of 5¢ per mile for use of automobile as a request not based on any rules of the schedule under which circumstances the carrier does not consider the Board can entertain or grant.

"It is the further position of the carrier that in any event the claim was not one pending and unadjusted as respects all time prior to the effective date of the Railway Labor Act, amended, approved June 21st, 1934."

OPINION OF BOARD: Some ten years or more ago the positions of pumper at four stations on line of carrier were abolished and the duties and responsibilities of the positions were transferred to the agent at each station where the pumps were located. Carrier arbitrarily established eleven dollars ($11.00) per month as the amount to be paid each agent for the operation of the pumps. This payment was in addition to the agent's regular salary and was in full for all pumping services rendered regardless of hours worked.

The Brotherhood protested the action of carrier in arbitrarily fixing the amount of compensation and claimed that the call and overtime provisions of the Telegraphers' Agreement applied. The parties were never able to reach an agreement and the matter was still an unsettled dispute when the Amended Railway Labor Act became effective June 21, 1934. After the passage of the Amended Railway Labor Act no steps were taken to enforce the claim of this employe prior to the institution of this proceeding.

One of the other agents involved in the dispute was located at Salome, Ariz. On Saturday, Dec. 21, 1935, this agent wired his superintendent to authorize call to operate pump on Sunday to meet an extra demand for water at his station due to a breakdown at an adjoining pumping station. The call was authorized. This agent also operated pump on Christmas day without further authorization. His claim for overtime worked on these two days was turned down by Carrier. This action of carrier resulted in bringing this long standing dispute to this Division, and in Award 421 the Board held the call and overtime provisions of the Telegraphers' Agreement applicable and sustained the claim for the overtime work performed on the two days in question.

Following the issuance of Award 421, Carrier issued instructions to each of the four agents to operate pumps within assigned hours and the record in this case shows that the pump at Perris, Cal. is now being so operated.

The claim presented in this dispute is for compensation, in accordance with the call and overtime provisions of the Telegraphers' Agreement, for all overtime worked from March, 1927, (when pumping work was assigned agent) to the effective date of Award 421, plus an allowance of five cents per mile for the use of the agent's automobile.

The question presented is whether the claim was seasonably filed. Article 5 (h) of the then prevailing agreement between the parties reads:

"The same line of procedure as that followed in the handling of discipline cases will be followed in handling other grievances arising in connection with the application of this schedule."

Article 5 (i) provides:

"Any grievances to be considered must be presented within thirty (30) days of date alleged to have occurred."

The pump at Perris, Cal. is located some distance from the station, and when the pumping work was assigned to the agent at this station protest was made by the agent because of the heavy duties of his office and the distance between the station and the pump. The agent was instructed not to let the operation of the pump interfere with his station work and if necessary to operate the pump outside office hours as he was being paid extra for this work. And the record shows that the agent did considerable work in connection with the operation of the pump outside regularly assigned hours. As pointed out above, however, neither the agent nor anyone in his behalf took any steps to enforce claim for overtime and use of automobile prior to institution of this case.

Carrier contends that when this work was taken over by the agent in 1927, no protest was made as to the compensation allowed but that all correspondence between the agent and Carrier dealt with the question of taking over the pumping and the method of taking care of it. The Brotherhood contends that protest was made by it and by the employe at the time the work was assigned to the agent.

In the opinion of the Board the question is unimportant. Conceding that claim was filed in 1927, the fact that it was permitted to remain dormant for ten years is sufficient to bar its consideration at this late date. Orderly procedure requires that claims for compensation be presented and prosecuted within the time limitation fixed in the agreements (See Awards 417 and 595). As was pointed out in Award 595, this, of course, does not bar complaints at any time concerning the violation of an agreement; it merely limits the time for which reparation may be enforced.

Formal claim for compensation was filed by the agent under date of August 13, 1937. This was more than sixty days after the effective date of Award 421, and the claim was for overtime work performed prior to the effective date of said award for which no valid claim was theretofore pending This claim for compensation was therefore barred by the rules of the prevailing agreement.

What has been said above disposes of the claim for five cents per mile for the use of the agent's automobile. The record shows that no claim was made for the use of automobile prior to August 13, 1937, and, conceding its validity, it was presented too late.

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 claim was presented too late and is barred by the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1939.