

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers of the Baltimore and Ohio Railroad that J. H. Davis is entitled to payment at time and one-half rate for one day of eight hours during each week he filled the position of Ticket Agent at Fairmont, W. Va., from August 3, 1937, to May 17, 1938, and was not relieved in accordance with the terms of the supplement to the Telegraphers' Agreement, dated July 5, 1932, which establishes a six-day work week for employees in that class of service."

JOINT STATEMENT OF FACTS: "Extra Agent-Operator J. H. Davis worked the Ticket Agent's position at Fairmont, W. Va., temporarily from August 3, 1937, until May 17, 1938, while the agency was under advertisement, during which period he was not relieved on regular established relief day for that position."

POSITION OF EMPLOYEES: "The Telegraphers' Agreement bearing effective date of May 16, 1928, as to wages and July 1, 1928, as to rules, and supplements thereto governs in this dispute."

"Effective with the week beginning April 24, 1932, the carrier placed in effect a relief plan, without the concurrence of the Telegraphers' Committee, whereby all employees coming within the scope of the Telegraphers' Agreement, (except those receiving monthly salary of \$135.00 or more), were relieved one day each week."

"As result of this action on the part of the carrier, on June 23, 1932, the Telegraphers' Committee entered into a memorandum of understanding with the carrier which provided for certain temporary rules covering the operation of the six-day work relief plan. The provisions of this memorandum of understanding are still in effect and a copy of same is submitted herewith as Employees' Exhibit A."

"Mr. J. D. Hecker, a regular employe who held rights to the ticket agent's position at Fairmont, West Virginia, a position coming within the scope of the Telegraphers' Agreement, rate of pay 74¢ per hour, was relieved from March 27, 1936, until March 24, 1937, on account of his physical condition. Mr. Hecker resigned from further service effective March 24, 1937, in order to be eligible for an annuity under provisions of the Railroad Retirement Act."

"Mr. H. R. Coole, an extra ticket agent, during the time Mr. Hecker was off sick, worked the job until August 3, 1937. During the time that Coole filled the position temporarily, he was relieved one day a week by Mr. R. E."

pro rata rates. While this agreement was negotiated subsequent to the date of the present case, it clearly indicates that it was not the intention that the management would be penalized in having to pay time and one half when employees filling seven day positions were required to work their rest day when there were no qualified employees available to relieve them.

"As the above understanding was negotiated to apply to regular assigned employees, it also applies to employees temporarily filling regular positions who take the same conditions as the employee regularly assigned, and would, therefore, apply in the present claim of J. H. Davis, who represented the regular employee temporarily, and we respectfully request the Board to deny the claim."

OPINION OF BOARD: J. D. Hecker, Ticket agent at Fairmont, West Virginia, was absent on account of sickness from March 27, 1936, to March 24, 1937, when he resigned. During this time and until August 3, 1937, H. R. Coole filled the position, when he retired on account of sickness and was succeeded by J. H. Davis. Davis worked until May 17, 1938, seven days per week. The position was a six-day week position. During part of the time Mr. Coole occupied the position, his relief day work was done by R. E. Smith, who worked thirty-three of the seventy-one relief days. The balance of the one-day-a-week relief was done by Mr. Coole himself and he was paid time-and-a-half for the relief day work. After he left, Mr. Davis worked seven days a week. He was paid pro rata for the relief-day work from August 3, 1937 to May 17, 1938.

In resisting this payment the carrier contended that paragraph (d), not paragraph (e), of the Memorandum of Understanding, which was agreed upon by the parties and became effective July 5, 1932, applied. This Memorandum of July 5, 1932, was agreed upon for the purpose of adapting the rules to the six-day week. We think paragraph (i) of said Memorandum is to be considered along with paragraphs (d) and (e).

In its statement of position, the carrier says:

"As the above understanding was negotiated to apply to regular assigned employees, it also applies to employees temporarily filling regular positions who take the same conditions as the employee regularly assigned, and would, therefore, apply in the present claim of J. H. Davis, who represented the regular employee temporarily, and we respectfully request the Board to deny the claim."

In its additional argument it says:

"There is no dispute between the carrier and the committee with regard to the application of the memorandum of understanding with the Telegraphers' Organization, above referred to, with regard to the payment of time and one-half to the employee regularly assigned when required to work his rest day until this understanding with the Telegraphers' Organization was modified by memorandum dated December 19, 1938, marked Carrier's Exhibit No. 2.

"During the period in question our records show the practice was not uniform with respect to the payment of time and one half to extra employees temporarily filling regular positions when required to work on the designated relief day of the position. As above stated, Coole was allowed time and one-half when he was required to work his relief days, although he was temporarily filling a regular position."

Under provisions of Article 12-(c) of the Telegraphers' Agreement, Operator J. H. Davis, who was working the ticket agent's position during period August 3, 1937, to May 17, 1938, was entitled to the same rate of pay and working conditions as applied to the regular employee while filling said position, and therefore should have been paid at the rate of time and

one-half for each day he was required to work on the regular relief day assigned to the position under the provisions of the "Memorandum of Understanding" dated July 5, 1932.

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 action of the Carrier was in violation of the prevailing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1940.