

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC

**THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway that the Agent at Geneseo, Illinois shall be paid one hour overtime in payment for a meal period each day he has worked since the first telegrapher position at that point was discontinued November 13, 1936, and until his assigned hours were rearranged April 24, 1939, to provide eight consecutive hours' duty without a meal hour or the position of first telegrapher is re-established."

EMPLOYEES' STATEMENT OF FACTS: "The current Telegraphers' Agreement dated January 1, 1928, in the wage scale, page 25, shows Geneseo agent, first, second and third shift telegraph positions. Prior to November 13, 1936, the first shift telegraph job was discontinued leaving no telegraph service during a greater part of the time between 8:00 A. M., and 4:00 P. M., and the agent who is occupying a non-telegraph position, or exclusive agent job, was not according to the Agreement required to do any telegraphing. But effective November 13, 1936, the agent was either requested or instructed by those in authority on the Rock Island Division to use the telephone for the purpose of transmitting and receiving messages and matter of record which automatically would remove his position from the provisions of Article 4-(g) of the Telegraphers' Agreement and place the daily assignment under the provisions of Article 4-(a) of the Telegraphers' Agreement, which the management declined to do."

CARRIER'S STATEMENT OF FACTS: "On November 13, 1936, H. B. Warnacut was assigned to position of Agent at Geneseo, Illinois. His assigned hours were from 8:00 A. M. to 5:00 P. M. with one hour off for lunch, per Article 4-(g) of the telegraphers' Agreement. In addition to the Agent there were two telegraphers assigned—one from 4:00 P. M. to 12:00 Midnight and the other from 12:00 Midnight to 8:00 A. M., per Article 4-(f) of the agreement. All positions are under the Telegraphers' Agreement of January 1, 1928. After Mr. Warnacut was assigned to the agent's position he performed the same class of work that has always been performed, without complaint, by the Agent at Geneseo. Effective April 24, 1939, the Agent's position was reclassified to that of agent-telegrapher with assigned hours of 8:00 A. M. to 4:00 P. M., the other two telegraphers remaining on assignments as previously. The Agent-telegrapher is paid 84¢ per hour; the second and third trick telegraphers are each paid 68¢ per hour."

grant 10¢ per hour increase in rate of pay of the Agent at Geneseo on basis that the agent was being required to perform telegraph duties in addition to his other work. This claim was declined by the management.

"Under date of July 30, 1937, General Chairman Dunnam requested the Superintendent to restore the first trick telegrapher position at Geneseo, alleging that the Agent and others were performing duties of a telegrapher. This claim was appealed to the Chief Operating Officer in General Chairman Dunnam's letter of November 27, 1937, and it was definitely declined by the management in letter of July 29, 1938.

"Under date of October 12, 1938, General Chairman Dunnam presented claim to the Superintendent that the exclusive agent be paid one hour's overtime, alleging that he was required to do telegraphing or telephoning and, therefore, it was not proper to class the position as a separate assignment under Article 4-(g).

"It is apparent the claim, as presented to the Board, is on the basis that the Agent, who was assigned to the position on November 13, 1936, should be paid one hour's overtime each day he worked between November 13, 1936 and April 24, 1939.

"The Management wishes to point out that if the claim had merit, which we contend it does not have, the agent has at no time made any claim and certainly he would best be in position to know if he was violating the telegraphers' agreement, but if any overtime were due, overtime tickets, as required in Article 4-(e), should have been submitted within a forty-eight hour period of each day that claim was made for the hour's overtime. As no individual claim has ever been presented there is nothing due under the telegraphers' agreement. As far as the organization making the claim is concerned, Article 6-(h) provides that grievances must be submitted within thirty days, otherwise redress in such cases will be waived.

"The claim made to the Board for overtime for meal period was presented for the first time on October 12, 1938. Although the organization has changed its claims as to this situation, we will discuss what we think is the claim. The carrier understands the claim is based on an alleged violation of Article 4-(a) and (g) of the Telegraphers' current agreement. In other words, under Article 4-(a), a meal hour cannot be taken out during an assignment when two or more shifts are worked. The claim is made that two or more shifts were worked, and, therefore, the assignment does not constitute one of an exclusive agent as provided in Article 4-(g). The main question is—was the agent an exclusive agent? (Agents not required to telegraph.) The answer is 'yes.' He was not required to telegraph. He did use the telephone. This use of the telephone is permissible. No train orders were handled by the exclusive agent (Award 652, Third Division).

"Under the combination of the first part of Rule 4-(a) and of Rule 4-(g) the schedule of a meal hour was permitted and the claim must be denied.

"On April 24, 1939, the agent's position was reassigned as agent-telegrapher, making three consecutive telegrapher positions at Geneseo. The amount of work at this station, Geneseo, had continued to decrease and in view of the fact that the agent's position is less important than formerly, the management decided, by reclassifying the agent's position to that of agent-telegrapher on April 24, 1939, that we could take advantage of the fact that a position was actually being maintained under the telegraphers' agreement and be in position to have the man on duty during the daytime use the telegraph instrument and have an open telegraph office at this point during the daylight hours."

OPINION OF BOARD: It appears to be amply established by the evidence of record that with the discontinuance of the first shift telegraph position at Geneseo, telegraphic duties were performed by the agent. Since

he thereupon ceased to be a non-telegraph agent, that part of Article 4 (a) which provides that "where two (2) or more shifts are worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work," applied to him in the adjustment of his hours of service (rather than the provision for eight consecutive hours, exclusive of the meal hour, which, under Article 4 (g), would apply to an exclusive agent), and the misapplication of the agreement by the carrier entitled him to recover for the extra hour involved on an overtime basis. The claim for such recovery here submitted embraces the period from November 13, 1936, when the agent was first called upon to perform telegraphic duties, to April 24, 1939, when his hours of service were reassigned in conformity with the applicable requirements of Article 4 (a). Complaint concerning the situation here involved, with requests for a wage adjustment or for a reclassification of the position, was made June 26 and July 30, 1937, and on October 12, 1938 it was finally reduced to the claim for overtime as submitted to this Board. There appears to be no legitimate obstacle to recovery for the entire period as claimed. In Award 951, involving the same parties, Article 6 (h), upon which the carrier relies, was held neither to bar suit in the case of a continuing violation nor to limit the recovery of reparation. Whatever the appropriate result may be under other rules of other agreements, no adequate grounds are disclosed for disturbing this determination of the Board.

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 evidence of record discloses a misapplication of the governing rules of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.