

Award No. 1247  
Docket No. TE-1213

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers, Alton Railroad Company, that Telegrapher H. A. Schrenk is entitled to 8 hours pay at the rate of time and one-half for September 6th, 1939, his regular assigned relief day, on account of being held for service and not used."

**EMPLOYES' STATEMENT OF FACTS:** "An agreement bearing the date February 16th, 1929, as to rules and August 1st, 1937, as to rates of pay, is in effect between the parties to this dispute."

"H. A. Schrenk's regular assigned position is second trick operator-leverman at Ridgely Tower. Mr. Schrenk's regular assigned hours are from 3:00 P. M. to 11:00 P. M., daily except Wednesday which is his regular relief day."

"Tuesday, September 5th, 1939, Operator Schrenk received instructions by wire as follows:

'b g sc Bloom 510pm 5

H. A. Schrenk

J. A. Rusch

Work your day off.

EES'

"On Wednesday, September 6th, 1939, Operator Schrenk received the following instructions:

'b j w Bloom Sept 6th 1939

H. A. Schrenk

J. S. Rusch

Later Ryan will work 2nd today and 3rd tomorrow.

EES

939am'

"Claim was made for the day's pay on account of being held for service and not used, and claim was denied."

**CARRIER'S STATEMENT OF FACTS:** "Mr. H. A. Schrenk is regularly assigned to position of Second Trick Operator-Leverman at Ridgely, Ill. Tower. His assigned hours are 3:00 P. M. to 11:00 P. M., daily except Wednesday, which is his regular relief day."

"At 5:00 P. M., September 5th, 1939, there was no operator available to work in Mr. Schrenk's place on Wednesday, September 6th, and he was

"When used on his regular relief day, the Memorandum of Agreement provides that the employes shall be paid at the rate of time and one-half.

"Schrenk's relief day was taken away from him by the Carrier and he was required to be ready for service on this Wednesday relief day, and he was not released from this readiness for service until approximately four hours prior to the commencement of this day's work.

"Having been required to be ready for service on Wednesday, September 6th, 1939, and not used, claim is made that Schrenk is entitled under the rules of the Memorandum of Agreement to the Telegraphers' Agreement to pay for the day he was available and not used and at the rate of time and one-half for the eight hours of the day he was so held."

**POSITION OF CARRIER:** "Operator H. A. Schrenk was regularly assigned to the position of second trick Operator-Leverman at Ridgely, Ill., his assigned hours being from 3:00 P. M. to 11:00 P. M. daily except Wednesday, which was his regular relief day.

"On Tuesday evening, September 5th, 1939, because there was no operator then available to relieve Mr. Schrenk the following day, he was notified at 5:00 P. M. while he was on duty that it would be necessary for him to work on September 6th. However, at 8:00 A. M., September 6th an extra telegrapher reported for duty, who was then available to relieve Operator Schrenk on his off day and was entitled to the vacancy. Accordingly, a message was filed at Bloomington, Ill., at 8:05 A. M., September 6th, addressed to Mr. Schrenk, advising him that Extra Telegrapher Ryan would be available and would relieve him for his regular relief day. This message read as follows: 'Later Ryan will work second today and third tomorrow.' This message was delivered to Mr. Schrenk at 9:39 A. M., or 5 hours and 21 minutes before he was due to go on duty and before he had left his home.

"The Employes are prosecuting the claim upon the assumption that Mr. Schrenk was held for service. It is the position of the Carrier that he was not held for service. He went off duty at 11:00 P. M. the night before and presumably got a night's sleep before being notified as early as possible the next morning that an extra telegrapher was then available and would work his trick starting at 3:00 P. M. that day. There is no schedule rule which would penalize the Carrier for payment of this day to Mr. Schrenk, nor have the Employes in their prosecution of the claim cited any rule in support of their position.

"In their negotiations with respect to this claim, the Employes made verbal statement that in two cases in the past similar claims had been allowed. The cases referred to were not similar. In one case, the employe could not be reached by telephone and had reported for duty before being notified. In the other case, the employe was deadheaded to a distant station and not notified until after his arrival. Further, it developed that in one of these cases payment had been erroneously allowed. The erroneous payment of an improper claim certainly does not establish a precedent binding the Carrier to the payment of all similar claims in the future, any more than an underpayment to an employe and accepted by him, due to an error, would also establish a precedent to be followed in the future.

"It is the position of the Carrier that Operator Schrenk was not held for service, and that he was notified before he left home in ample time before he was due to go on duty that an extra telegrapher was available and would work his relief day. The claim of the Employes is not supported by schedule rules or past practice, is without merit and should be denied."

**OPINION OF BOARD:** The claimant is assigned to second trick, 3:00 P. M. to 11:00 P. M., at Ridgely, daily except Wednesday, his relief day. Tuesday, September 5, 1939, while he was on duty, he was notified it would be necessary for him to work the next day, Wednesday, his relief day. On Wednesday, September 6, an extra operator became available and a telegram

was sent to claimant so advising him. The Carrier contends that the claimant received the message at 9:39 A. M. of that day, while he contends that he did not receive the message until 10:40 A. M.

The claim is thereupon made for pay for 8 hours at time and one-half which is the pay claimant would have received had he worked that day. (Carrier admits that had he worked that day he would have received time and one-half for the 8 hours' work.) The basis of this claim is that the claimant's relief day was taken from him because he was required to be ready for service on this relief day. In other words, he contends that his time was free from Tuesday, September 5, at 11:00 P. M., until Wednesday, September 7 at 3:00 P. M.

The issue in this case is whether payment for a day's service under these circumstances should be made claimant to the same extent as if he had actually worked the second trick on his relief day.

Petitioner, among others, relies upon Rule 2 of the current agreement which is as follows:

"Eight consecutive hours exclusive of the meal hour will constitute a day's work, except where two or more shifts are worked, eight consecutive hours with no allowance for meals will constitute a day's work.

"In offices where agent and day operator or agent and assistant agent are employed, and start work between 6:00 A. M. and 8:00 A. M., such offices will be considered one shift offices.

"Hours to be regularly assigned and not subject to change from day to day.

"Employees as per Rule 1 will not be required to suspend work during regular hours to absorb overtime.

"Commencing time for agents or where agent and day operator are employed will be between 6:00 and 8:00 A. M."

The Petitioner construes this rule as follows, that:

"This Rule provides that 8 hours will constitute a day's work—that hours must be regularly assigned—that hours are not subject to change from day to day. Mr. Schrenk (the claimant), at 5:10 P. M., Tuesday, September 5th, was assigned to work at Ridgely Tower commencing 3:00 P. M., Wednesday, September 6th, thus becoming the regular assigned man for second trick Ridgely Tower on September 6th. Having been assigned at 5:10 P. M., Tuesday, September 5th for service on Wednesday, September 6th, the assignment could not be changed on September 6th, therefore this Rule was violated by the Carrier when it notified Schrenk (the claimant) on September 6th that the assignment of hours given him on September 5th was changed."

On the other hand, the Carrier contends that this Rule does not apply to the situation in dispute, but refers only to working conditions constituting the 6 days that he regularly worked; having no application to his relief day.

Looking only to the language used in the Rule, the Board is of the opinion that either interpretation could be sustained. Under these circumstances, the Board must look to the interpretation put upon this Rule by the parties (see TE-1222, Award No. 1246). The record shows that this very claimant, H. A. Schrenk, while working at Ridgely Tower on October 5, 1937, at 4:37 P. M. received a message to work Wednesday, October 6, 1937, his relief day. There is evidence that at 11:02 A. M., Wednesday, October 6, 1937, he received a message that he would be relieved by Operator Schull.

This claimant made claim for one day's pay at rate of time and one-half for Wednesday, October 6, 1937. The claim was sustained by the Carrier. The Carrier now contends that it was of the opinion that the claimant did not know of the change until he reported for work. The Board thinks that this is immaterial as the claim in fact was actually paid.

Petitioner has cited other somewhat similar claims that were allowed. However, in each of these instances the claimant did not receive notice he was not to work until he had actually reported for work.

Therefore, the Rule as interpreted by the parties has been violated.

**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 in the instant case constituted a violation of the prevailing agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1940.