

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Boston and Maine Railroad that, because the Agent at North Conway, N. H. was on each Sunday from June 25, 1939 to August 27, 1939, worked an assignment 3:30 P. M. to 7:40 P. M. which assignment lies wholly outside his regular week day tour of duty and, has on each of said Sundays been relieved from duty 5:00 P. M. to 6:30 P. M., he is entitled to and shall be paid for two calls as provided for in the Sunday and Holiday rule, Rule 10, for each day so worked."

JOINT STATEMENT OF FACTS: "Regular assigned hours of duty of Agent at North Conway, N. H., were as follows:—

Weekdays 5:45 A. M. to 2:45 P. M., meal hour 12:00 Noon to 1:00 P. M.

Sundays 3:30 P. M. to 5:40 P. M., which was changed effective June 25, 1939 to 3:30 P. M. to 7:40 P. M.

"Each Sunday, June 25, to August 27, 1939 he was released by Train Dispatcher from 5:00 P. M. to 6:30 P. M.

"For his service Sundays during that period he was paid 6 hours, 10 minutes at pro rata rate.

"Clark claims pay on the basis of two calls—the first 3:30 P. M. to 5:00 P. M., the second 6:30 P. M. to 7:40 P. M.

"This claim has been declined by the Carrier. An agreement exists between the Carrier and the Order of Railroad Telegraphers as of March 18, 1927, revised effective July 1, 1939."

POSITION OF EMPLOYES: "At North Conway, N. H., the regular assigned week day hours are 5:45 A. M. to 2:45 P. M. Meal hour from 12:00 Noon to 1:00 P. M. The Sunday hours are as follows:—

Previous to June 25, 1939—3:30 P. M. to 5:40 P. M.

Effective June 25, 1939 these hours were changed to 3:30 P. M. to 5:00 P. M., and 6:30 P. M. to 7:40 P. M., with a release period 5:00 P. M. to 6:30 P. M.

"You will note that both sets of Sunday hours shown above are outside the scope of the regular assigned week day hours.

was less than 8 hours; in fact it was only four (4) hours and ten (10) minutes.

"Call Rule No. 7 applies only when employes are 'notified or called to perform work not continuous with the regular work period.'

"At North Conway in this case, Agent Clark had a 'regular work period' Sundays from 3:30 P. M. to 7:40 P. M. The Claimant did not perform any service other than within that 'regular work period.' Rule 7 does not apply, therefore, there is no valid basis for the claim.

"The fact of the hours of a regular assignment, either on a week day or on a Sunday, being broken by a release period, does not transfer the basis of payment to that provided by Call Rule No. 7.

"Agents and men in Telegraph Service when released for a short period of time during their regular assignments either upon their own request or upon instructions of Carrier's representative are paid not less than the pay of the full assignment."

OPINION OF BOARD: The joint statement of facts in connection with this claim are as follows:

"Regular assigned hours of duty of Agent at North Conway, N. H., were as follows:

Weekdays 5:45 A. M. to 2:45 P. M., meal hour 12:00 Noon to 1:00 P. M.

Sundays 3:30 P. M. to 5:40 P. M., which was changed effective June 25, 1939 to 3:30 P. M. to 7:40 P. M.

Each Sunday, June 25, to August 27, 1939 he was released by Train Dispatcher from 5:00 P. M. to 6:30 P. M.

For his service Sundays during that period he was paid 6 hours, 10 minutes at pro rata rate.

Clark claims pay on the basis of two calls—the first 3:30 P. M. to 5:00 P. M., the second 6:30 P. M. to 7:40 P. M."

Both parties agree that this dispute is governed by the last paragraph of Rule 10, which reads:

"When notified or called to work on Sundays and the above named holidays a less number of hours than constitute a day's work, employes shall be paid a minimum allowance of four (4) hours at straight time rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty."

The employes contend that there were two notifications on each Sunday from June 25, 1939 to August 27, 1939, while the carrier contends that there was only one. There is no doubt that under this rule it is possible to have two notifications or calls, but as the Agent knew, before June 25, exactly what his assignment for each Sunday would be, that is, from 3:30 P. M. until 7:40 P. M., with a release of one hour and a half from 5:00 P. M. to 6:30 P. M., the Board is of the opinion that there was only one assignment. The carrier's contention must be sustained.

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 will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.