

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, on the Southern Pacific Company, Pacific Lines, that the occupant of position of Agent-telegrapher at Acampo, Western Division, on September 1st, 1938, and subsequent thereto, be compensated on an overtime basis for 6 hours daily during the time that his assigned starting time was arbitrarily fixed at 3:00 P. M."

EMPLOYEES' STATEMENT OF FACTS: "The position of Agent-telegrapher, Acampo, Western Division, was established September 1st, 1938, hours 8:00 A. M. to 5:00 P. M. September 13th, 1938, hours of assignment were made 9:00 A. M. to 6:00 P. M. September 16th, 1938, hours of assignment were made 3:00 P. M. to 12 midnight and continued to be so assigned until the position was closed October 31st, 1938."

POSITION OF EMPLOYEES: "EXHIBITS 'A' to 'F' inclusive are attached to and made a part of this Brief.

"Conferences have been held on this dispute in accordance with the requirement of the Act.

"The dispute is filed under Rule 12 of the agreement in effect dated September 1st, 1927 as relates to Rules, dated May 1st, 1927 and amended July 1st, 1930 and August 1st, 1937 as relates to rates of pay.

'RULE 12

'Starting Time

'(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected.

'(b) Where three consecutive shifts are worked covering the 24-hour period no shift will have a starting time after twelve (12:00) o'clock midnight and before six (6:00) A. M.

'(c) At stations where but one (1) telegrapher is employed, if a day office, the hours of service shall begin between six (6:00) A. M. and nine (9:00) A. M. At stations where two (2) telegraphers are employed the hours of service for agent or first trick telegraphers shall begin between six (6:00) A. M. and nine (9:00) A. M.

'(d) At stations where three (3) or more telegraphers are employed covering the twenty-four (24) hour period, the hours of service for the agent or first trick telegraphers will commence at eight (8:00) A. M.

"The attention of the Board is invited to the fact that Acampo is normally a non-agency or 'blind siding,' located in a fruit producing territory, at which carload shipping facilities exist and from which carload shipments of grapes are made during a season extending over about two months. There was no practical necessity from the Carrier's standpoint for maintaining a full-time 8-hour assignment at Acampo but the Telegraphers' Agreement does not permit an assignment of less than 8 hours. The sole purpose in opening the seasonal office was to care for the convenience and necessity of the carload shippers of grapes. The only period of the day that an Agent-telegrapher was necessary or his services might be utilized was the late afternoon and evening after the loading of cars has been completed, cars to be sealed, shippers' bills of lading were to be signed, waybills prepared, and arrangements made for cars to be picked up and switching to be performed. As a matter of fact all of these details could just as easily have been taken care of by the regularly established agency at Lodi, only 2.9 miles distance and without the necessity of establishing the seasonal agency at Acampo. Acampo was not a train-order office and there was no need for the Agent-telegrapher as a train order operator. The Carrier therefore established the hours of 3:00 P. M. to 12:00 midnight, excluding a meal hour, as an assignment that would best serve the needs of the shippers and the operating requirements of the Carrier and which actually accomplished that purpose.

CONCLUSION: "Inasmuch as we have clearly and conclusively shown that no rule of the Telegraphers' Agreement has been in any manner violated, but to the contrary, the Carrier having strictly adhered to the provisions of the agreement in the assignment of hours to the seasonal position of Agent-telegrapher at Acampo, the Carrier requests that the claim of the Petitioner be denied.

"For the Board to do otherwise than deny the claim, would be in utter disregard of the principle enunciated in its Award 109 of October 15, 1935, wherein it was stated:

"It is not within the province of this Board to add or take away language from an agreement made between the parties. In this case it would be necessary to alter the existing agreement between the parties in order to support the contention of the Petitioner."

OPINION OF BOARD: This is a companion case to TE-1338, TE-1339 and TE-1340 and was argued concurrently therewith.

The position of Agent-telegrapher at Acampo, a one man station, was established on Sept. 1, 1938, with the assigned hours of 8:00 A. M. to 5:00 P. M. On Sept. 13, 1938, the assigned hours were changed to 9:00 A. M. to 6:00 P. M., and on September 16th, without conference or agreement between the parties, the assigned hours were changed to 3:00 P. M. to 12:00 Mid-night. This station was closed on October 31, 1938.

The arguments presented in this case are the same as those presented in TE-1338, 1339 and 1340, except that the carrier further argues that, in the event a violation of the agreement is found, reparation is barred because "the cause for complaint disappeared with the closing of the station on Oct. 31, 1938, and that the claim was not submitted to this Board until June 23, 1940, almost two years thereafter."

As in Awards 1558, 1559, and 1560, decided herewith, we find that by requiring the agent at Acampo to begin his "one man assignment" at 3:00 P. M. without mutual agreement between the parties, the Carrier has violated the agreement.

There is no language in the agreement which bars the claim for overtime compensation such as was the basis for decision in Award 863. Awards that deal with "cut-off" rules on other properties are not controlling here. Nor

can we say that Award 1079 is controlling where the claim for reparation was denied because "the conditions of which complaint is made had disappeared." In this instance the only reason the conditions disappeared was because the station was discontinued.

No limitation being imposed in the agreement upon the time for filing claims, the Petitioner is entitled to the compensation claim for overtime. Such reparation is limited, however, by the facts to the period from Sept. 16th to Oct. 31st, 1938.

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 carrier has violated Rule 12 of the Agreement.

AWARD

Claim sustained as stated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1941.

Dissent to Award 1561 (Docket TE-1341)

We dissent from this Award for the reasons expressed in our dissent to Award No. 1558 (Docket TE-1338), rendered concurrently.

/S/ R. F. Ray
/S/ C. P. Dugan
/S/ A. H. Jones
/S/ C. C. Cook
/S/ R. H. Allison