

Award No. 2128
Docket No. TE-2106

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, 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 Telegrapher J. L. Rasor be compensated for six hours daily at overtime rate under Rule 14 of the effective agreement account service performed as agent-telegrapher at Westley, California, April 7 to April 30, 1939, assigned hours 3:00 P. M. to 7:00 P. M. and 8:00 P. M. to 12:00 midnight in violation of Rule 12 (c) of the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant Rasor worked a temporary assignment as Agent-telegrapher at Westley, Western Division, April 7th to 30th, 1939, inclusive. His starting time was fixed by the Carrier at 3:00 P. M. without conference and agreement with the Organization representative.

POSITION OF EMPLOYEES: An agreement is in effect between the parties to this dispute and this agreement is on file with this Board.

EXHIBITS "A" to "F" are made a part of this submission.

The claim is prosecuted under Rule 12 (c) and paragraph two of the Note to the Rule, both being now quoted:

"RULE 12

"Starting Time

"(c) At stations where but one (1) telegrapher is employed, if a day office, the hours of service shall begin between six (6) A. M. and nine (9) 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) A. M. and nine (9) A. M."

"NOTE: It is understood that at stations where but one (1) telegrapher is employed, if the necessities of the service require starting telegrapher outside of specified period set forth in Section (c), the starting time will be mutually agreed upon between representatives of the carrier and the employees, but in no case will one-man assignments begin earlier than five (5) A. M., nor later than twelve (12) noon."

Conference was held with the Carrier on this dispute, January 28th, 1942.

CONCLUSION

The carrier submits that the Board should dismiss the alleged claim in the instant case for want of jurisdiction, but in the event that it does not, then the carrier submits that the Board should deny it.

OPINION OF BOARD: The issue in this case is substantially the same as in Docket TE-2088, Award 2126, and Docket TE-2096, Award 2127. Award 2126 is controlling here and the decision with respect to this claim must be the same as in that case.

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 employees involved in this dispute are respectively carrier and employees 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 Rule 12 (c) as qualified by the note and as interpreted in Awards 1558, 1559, 1560 and 1561 is applicable to the practice here involved, but that the evidence of record does not justify an award of reparation.

AWARD

Claim as to applicability of Rule 12 (c) sustained, and claim for reparation denied, both in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.

Dissent

to

Award 2126, Docket TE-2088
Award 2127, Docket TE-2096
Award 2128, Docket TE-2106
Award 2129, Docket TE-2109

This Opinion correctly interprets the real and common sense intent of Rule 12, including the Note.

In view of the interpretation here announced, which is contrary to the interpretation of the rule as made in Awards 1558 to 1561, it is our opinion that the correct interpretation and true meaning of the rule should prevail.

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