

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway Company that:

(a) Telegrapher D. B. Beall, Coleman, Texas, be compensated for seven (7) hours at 69¢ per hour for work performed by him at Coleman, Sunday, July 13, 1941; and

(b) Agent-telegrapher Mrs. Willie Hardy, Orlando, Oklahoma, be compensated for seven (7) hours at 71¢ per hour for work performed at Orlando, July 4, 1941, a designated holiday.

EMPLOYES' STATEMENT OF FACTS: An Agreement, bearing effective date of December 1, 1938, exists between the parties to this dispute; copies of which are on file with the National Railroad Adjustment Board.

D. B. Beall, regularly assigned as telegrapher-clerk, Coleman, Texas, weekday assignment 6:15 A. M. to 3:15 P. M. with sixty consecutive minutes between 11:30 A. M. and 1:30 P. M. for meal, was notified to and did work 5:15 A. M. to 9:15 A. M., Sunday, July 13, 1941.

Mrs. Willie Hardy, regularly assigned as agent-telegrapher, Orlando, Oklahoma, weekday assignment 7:00 A. M. to 4:00 P. M. with sixty consecutive minutes between 11:30 A. M. and 1:30 P. M. for meal, was notified to and did work 6:40 A. M. to 10:00 A. M. July 4, 1941.

POSITION OF EMPLOYES: As indicated by the Organization's Statement of Facts, Telegrapher D. B. Beall, on Sunday, July 13, 1941, was notified to and did work 5:15 A. M. to 9:15 A. M.—the time 5:15 A. M. to 6:15 A. M. being entirely outside of his weekday assignment and the time 6:15 A. M. to 9:15 A. M. within his weekday assignment. For this service he was compensated by the Carrier in the amount of \$3.45 representing five (5) hours at pro rata rate. Whereas Mr. Beall made claim, and the Organization concurred, that the allowance should have been \$4.83 representing seven (7) hours at pro rata rate. The computation of the Carrier is based on the theory that the time 5:15 A. M. to 7:15 A. M. constitutes a call (two hours at time and one-half time) and the time 7:15 A. M. to 9:15 A. M. two hours at pro rata rate. The Organization, pursuant to the governing rules, computed the time as 5:15 A. M. to 6:15 A. M. a call (two hours at time and one-half time); 6:15 A. M. to 8:15 A. M. a call (two hours at time and one-half time); and 8:15 A. M. to 9:15 A. M. one hour at pro rata.

Discussion Regarding Award 813

The General Chairman has cited, and seeks to have the instant dispute decided upon the basis of, Award 813, Docket TE-837, which covered a dispute arising on the Southern Pacific Railway (Pacific Lines) under the Southern Pacific Telegraphers' Schedule and under different rules than are under consideration in the instant dispute. The Carrier maintains that no support is to be found in Award 813, for the reason that the decision reached in that award was premised on Article 16 (b), the call rule, of the governing agreement, as evidenced by that part of the Opinion of Board, reading:

"From the conclusion that Rule 6 (c) applies to the situation at hand, it follows that Rule 16 (b) is the rule under which the claimant should have been compensated * * *."

No rule similar to Article 16 (b), referred to in Docket TE-837, Award 813, can be found in the current agreement between the parties to this dispute. Not only does the Call Rule, Article III (c) of the current agreement contain no provision similar to Article 16 (b) of the Southern Pacific Schedule, but the Organization's representatives have not, in the handling of this dispute with the Carrier, made any reference to the Call Rule. Their claim has been handled strictly on the basis of Article III (e-3) and Award 813. They cannot, therefore, now change the basis of their claim. See Awards 1652 and 1686. Further, **a condition of past practice and agreed understanding of the parties with respect to the application of the governing rule was not in evidence in Award 813 as it is in the instant dispute.**

Finally, the Carrier maintains that the instant case must be decided upon the applicable rules of the Santa Fe Telegraphers' Schedule and not upon the Southern Pacific Telegraphers' Schedule. The Board must render its decision upon the basis of the rules agreed upon between the parties, as stated by this Division in Award 1489:

"The function of this Board is limited to interpreting and applying the rules **agreed upon by the parties.**" (Emphasis supplied.)

The rules "agreed upon by the parties" and here for interpretation are those in effect between Atchison, Topeka and Santa Fe Railway System lines and The Order of Railroad Telegraphers.

The claims of the Employees in the instant dispute should be denied for the following reasons:

- (1) The payments allowed were in accord with the requirements of Article III (e-3).
- (2) The payments were in strict accord with the past application of the Schedule rule.
- (3) The payments allowed were those requested by the representative of the Employees, and they complied with his interpretation of the Schedule rule.
- (4) Award 813, rendered on the basis of the Southern Pacific Schedule and a rule not here in evidence, does not support the instant claim.

OPINION OF BOARD: This Docket presents the question of the correct computation of pay for work of employees called to work on a Sunday or a holiday in advance of the beginning time of their regular week-day assignment and who remain on duty into, but not through, the hours of their regular week-day assignment.

The applicable Agreement, Article III (e-1) provides that, "employees will be excused from Sunday and holiday duties as much as the conditions of business will permit."

Article III (e-2) provides that, "Time worked on Sundays and * * * holidays * * * shall be paid for at the regular hourly rate, when the entire number of hours constituting the regular week-day assignment are worked."

Article III (e-3) provides that, "when notified or called to work on Sundays and * * * holidays, a less number of hours than constitute a day's work within the limits of the regular week-day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the regular hourly rate after the second hour of each tour of duty. Time worked before or after the limits of the regular week-day assignment shall be paid for in accordance with overtime and call rules."

The two claims covered by this Docket were for pay for two employees who were called on Sunday or a holiday to work in advance of their week-day starting time and worked on into but not through the period of their regular assignment. The Carrier paid them one "Call" for two hours at the overtime rate and then at the pro-rata rate for the remainder of the time worked. The Organization contends that the employees should each have been paid for two "Calls", one for the time worked in advance of their starting time, which time in each case was less than two hours, and a second "Call" payment at time and one-half for the first two hours worked within the time of their week-day assignment.

All three of the above-quoted paragraphs of Article III of the Agreement are for the purpose of discouraging the Carrier from requiring Sunday and holiday work. Article III (e-3) provides two separate and distinct penalties for requiring such work:

First, a penalty for requiring work for less than a full day "within the limits of the regular week-day assignment," a penalty of a minimum allowance of two hours at overtime rate.

Second, a penalty for requiring work "before or after the limits of the regular week-day assignment," a penalty of paying therefor "in accordance with overtime and call rules."

The computation made by the Carrier ignored either the first or the second penalty.

The Carrier makes several contentions to justify its computation. It first points out the history of this Rule, showing that it developed and was adopted into the various agreements from the "Sunday and Holiday Work" Rule handed down by the Labor Board, Decision 757, paragraph 3 of Rule 8, which in turn developed from the decision of the Director General of Railroads in his Interpretation No. 3 to Supplement No. 13 to General Order No. 27, dated April 25, 1919. The Carrier has cited example (f), set out by the Director General at the time, to illustrate computation under said Rule. The example assumed a regular assigned week-day starting time of 8:00 A. M. and said that a man called on Sunday at 7:00 A. M. to work to 9:00 A. M. should be paid for 2 hours at time and one-half. Computation pursuant to this example would give no consideration to the fact that the man started work in advance of his regular week-day time. It would result in exactly the same pay as if he had worked two hours beginning at 8:00 A. M. Yet in example (d), set out with the same decision, it is shown that the man beginning work on Sunday at 7:30 A. M. should be paid for the thirty minutes before 8:00 A. M., his regular starting time, a minimum call allowance of two hours at the overtime rate. Example (d) thus gives a meaning to the second penalty provided in Article III (e-3).

By its Decision No. 757, the U. S. Railroad Labor Board, on March 16, 1922, promulgated Rule 5, the Call Rule, and Rule 8, the Sunday and Holiday Rule, and on April 15, 1924, interpreted the Call Rule (Interpretation No. 1 to Decision No. 757) as meaning that an employee required to report for duty before his regular starting time "shall be paid a call (3 hours for 2 hours'

work or less) and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time." Said Call Rule was thereafter copied into the Agreement here in question. Last sentence of Article III (c).

The Carrier insists that the Call Rule has nothing to do with this claim, that it must be decided only on the "Sunday and Holiday Work" Rule. The second penalty provided by Article III (e-3) is that for time in advance of the regular starting time, the employes shall be paid pursuant to the Call Rule. This provision requires the proper interpretation of the Call Rule.

By Award No. 813, in Docket No. TE-837, this Division passed on this question and correctly decided against the construction contended for by the Carrier.

The Carrier attempts to show a variance of the Agreement by a subsequent understanding that the construction contended for by the Carrier should be adopted. The subsequent understanding, however, was with a Local Chairman of the Relay Division who was not a party to the Agreement and who at most could have bound only his Relay Division. Both of the claimants here involved were of other Divisions.

To show the past application of the Rule by the parties, the Carrier has cited numerous instances during the past ten years in which it paid telegraphers for Sunday or holiday work according to the computation which it claims is correct. The cases cited all seem to have concerned stations in Texas and it is not shown either that the individuals concerned raised any question as to the computation of their pay or that any of the cases were called to the attention of the Organization. We do not believe that these cases sufficiently show either an interpretation by the parties indicating an intention in making the Agreement contrary to the Interpretation of the Railway Labor Board or a subsequent abrogation of the Agreement.

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 employes involved in this dispute are respectively carrier and employes 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 violated the Agreement in the payment of the two claimants.

AWARD

Paragraphs (a) and (b) of the claim are sustained as to the difference between what claimants received and what they should have received by the correct computation of the payment for their work.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.