

Award No. 2444

Docket No. TE-2305

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**BERRYMAN HENWOOD, TRUSTEE
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
DEBTOR**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Company, that T. R. Sims, regularly assigned clerk-telegrapher at Stamps, Arkansas, who was required to work in the place of another employe on another shift at Lewisville, Arkansas, on July 1, 2 and 3, 1942, shall be paid for this work at the rate of time and one-half the straight time rate of the position he worked in accordance with the "Change in Shift" rule mutually adopted September 4, 1940, by the parties to the telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, as to rules of working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

Effective September 4, 1940, a "Change in Shift" rule was mutually adopted by the parties to said agreement, providing that an employe required to work in the place of another employe on another shift, shall be paid the rate of time and one-half of the position worked, or his assignment, whichever is the greater.

T. R. Sims, regularly assigned clerk-telegrapher at Stamps, Arkansas, under the telegraphers' agreement, was required by the carrier to work in the place of another employe on another shift at Lewisville, Arkansas, on July 1, 2 and 3, 1942.

For working in the place of another employe on another shift at Lewisville, Telegrapher Sims was paid at the straight time rate of the position worked.

POSITION OF EMPLOYES: In resolving disputes which had arisen as to the appropriate method by which to compensate employes under the telegraphers' agreement when required by proper authority to work in the place of another employe on another shift, the following "Change in Shift" rule to govern in such cases was mutually adopted, effective September 4, 1940, between the General Superintendent of the St. Louis Southwestern Railway Company and the General Chairman of The Order of Railroad Telegraphers, parties to the telegraphers' agreement:

test the service. Without being technical, I think we could interpret Article 16 of the agreement to cover clerical positions as well as positions covered by the scope rule, * * *."

This shows that the Employees formerly placed the same interpretation on Article 16 which the Carrier still maintains, that is, the assigned telegrapher used on another position in emergency must be paid not less than his regular compensation, plus expenses while away from his home station. Therefore, their claim in the present case is in effect request for a change in the agreement by interpretation.

Telegrapher Sims was used in an emergency, as contemplated by Article 16 of the Telegraphers' agreement. The settlement of September 4, 1940, referred to by the Employees in their Statement of Claim as an obligation that he be paid time and one-half rate, covered an entirely different matter not similar to the present case and has no bearing upon the present case. The Carrier, therefore, respectfully requests that the Employees' claim be denied.

OPINION OF BOARD: On account of increased business, additional telegraphers were put on at Lewisville, but one of the new men, Wilson, was not able to handle the volume of work on his shift. No qualified extra telegrapher was available. Sims was therefore used in Wilson's place for three days and compensated in accordance with Article 16. During those days Wilson, who was not qualified for the work at Lewisville, filled Sims' regular assignment at Stamps.

Because of the fact that an official had informed Sims that he would be paid time and one-half the Carrier offered to pay him upon that basis without prejudice to the Rules. The offer was refused by the Organization, which chose to stand upon what it called the "change in shift rule mutually adopted September 4, 1940, by the parties to the telegraphers' agreement."

This claim differs from Award 2442, Docket TE-2300 and Award 2443, Docket TE-2304, only in that there was no qualified extra telegrapher available to replace Wilson. The claim is therefore governed by the holding in Award 2442, Docket TE-2300, with reference to the applicability of Article 16, and the employe was properly paid in accordance with that Article.

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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 27th day of January, 1944.