Award No. 2850
Docket No. TE-2667

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Delaware, Lackawanna & Western Railroad, that the carrier, pursuant to the provisions of Rules 5 and 8 of the Telegraphers' Agreement, shall pay the incumbents of the Owego and Mt. Morris agencies retroactively and hereafter in addition to the monthly rate, for all time said agents are required by the management to work on Sundays and holidays.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Effective May 25, 1942, the hours of service of the agent at Mt. Morris were increased by the carrier from 306 days per year (204 hours per month) to 365 days per year (243 hours per month) and the wage increased $3.93 per month.

Effective December 1, 1942, the hours of service of the agent at Owego were increased by the carrier from 306 days per year (204 hours per month) to 365 days per year (243 hours per month) and the wage increased $3.90 per month.

POSITION OF EMPLOYES: The question at issue is simple and should have been settled on the property, and said question can be wholly stated in a few words. It is: Can the carrier increase the hours of service of the involved agents from 306 days to 365 days per year, or 59 days, or 472 hours, with an increased wage allowance of $47.16 per year, which means the additional hours must be worked for less than ten cents (10¢) per hour.

The historical facts, briefly stated, are that prior to August, 1937, the rate of the Owego agency was $200.00 per month, six days per week. The general wage increase of August, 1937, amounting to 5¢ per hour for hourly rated employes, and the equivalent for monthly rated employes, increased the rate to $210.20, which, of course, comprehended 204 hours' service per month.

Prior to August, 1937, the rate of the Mt. Morris agency was $196.00 per month. The August, 1937, general wage increase augmented that rate by $10.20, based on a comprehension of 204 hours per month, or to $206.20.

Effective December 2, 1939, both the Mt. Morris agency and the Owego agency were negotiated into the Telegraphers' Agreement, with no restrictions or exceptions, at the rates of $210.20 and $206.20 per month, respectively.

It is therefore the Carrier's contention that the employes involved are now and have been paid on the proper basis and that the increases authorized by the Mediation Agreement of December, 1941, have been properly paid in each and every instance. The claim is, therefore, without merit and should be denied.

OPINION OF BOARD: The claim is by the General Committee of the O. R. T. asking that the Carrier pay the agents at Mt. Morris and Owego for all time said agents are required by the management to work on Sundays and holidays.

It is the contention of the Employes that at the time of the effective date of the present agreement, which was May 1, 1940, the hours of service of the agent at Mt. Morris were on a six-day basis or 204 hours per month; that on the 25th day of May, 1942, the hours of service of the agent at Mt. Morris were increased by the Carrier from 306 days per year (204 hours per month) to 365 days per year (243 hours per month).

Effective December 1, 1942, the hours of service of the Agent at Owego were increased by the Carrier from 306 days per year (204 hours per month) to 365 days per year (243 hours per month).

The Employes claim the earnings of the two agencies should be increased to the extent provided for in Rule 8 of the Telegraphers' Agreement, that is, since previous assignments comprehended no Sunday or holiday service; the requirements that these positions work fifty-nine additional days each year called for payment for that additional service under Rule 8, captioned Sunday and Holiday Work.

The Carrier contends that these two agencies were on a seven-day assignment on the date the current agreement between the parties became effective and that, as they were rated as monthly rated positions, the amount stated in the contract is controlling and the claim should be denied.

This Board is of the opinion that the amounts stated in the contract should be controlling if there was not a change in the number of days of the assignments of the jobs involved. If, as the Employes contend, these positions were six-day positions on the effective date of the contract and were later changed to seven-day positions, which would mean that the Employes would be required to work on Sundays and holidays, the Employes' contention should be sustained and retroactive pay allowed to the date the claim was made to the Carrier. If, however, the Carrier's contention were borne out by the evidence in the record, that these positions were in reality seven-day positions on the effective date of the contract, then the claim should be denied.

The record is one of confusion. No evidence is presented by either party to support their statements as to the agents' assignments at either of these places. In view of the conflicting statements and lack of supporting evidence, the Board is unable to ascertain the facts.

There should be no difficulty in ascertaining the facts on the property and bringing about a complete settlement of this case. If at the date of the effective agreement these positions were on a six-day basis, that is, the Employes holding them were only assigned to six days per week, and after the effective date of the Agreement these positions were changed to seven-day positions, then and in that case the claims should be allowed retroactive to the date on which they were first presented to the Carrier.

If, however, the facts show that at the effective date of the contract, these positions were seven-day positions as contended by the Carrier, then the claim would have to be denied.

This case is referred back to the parties to develop and ascertain the facts and to arrive at a settlement in accordance with the terms of this Opinion.

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 case be remanded to the parties to ascertain the facts and to settle the case in accordance with the Opinion.

AWARD

Case remanded to the parties to settle in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1945.