

Award No. 2989

Docket No. TE-2937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway that M. H. Field is entitled to and shall be paid under Rule 20 of the Telegraphers' Agreement for time consumed on Sunday, April 11, 1943, in transferring between his former regularly assigned position at Dows, Iowa, and his newly assigned position at Cone, Iowa, the difference between eight hours at the rate of the position at Dows as claimed and three hours at that rate which he has received.

EMPLOYEE'S STATEMENT OF FACTS: Telegrapher's Bulletin No. 5, Cedar Rapids Division, dated March 1, 1943, advertised for permanent assignment a vacancy as Agent-Operator at Cone, Iowa, hours 7:15 A. M. to 4:15 P. M., daily except Sunday, rate of pay 76c per hour.

M. H. Field, an employe under the agreement and holding a regular assignment as Agent-Telegrapher at Dows, Iowa, with week day hours 4:30 A. M. to 12:30 P. M., Sunday and Holiday hours 4:30 A. M. to 6:30 A. M., rate of pay 78c per hour, applied for and was awarded the position as Agent-Operator at Cone, Iowa. He was directed by proper authority to check over the station accounts at Dows to a relief man on Saturday, April 10th, and to check in on the Cone position Monday, April 12th.

Mr. Field complied with these instructions, but in doing so it was necessary that he make the transfer from Dows to Cone Sunday, April 11th. For this service he originally requested that he be paid a call of two hours at time and one-half, based on the wages he would have received had he remained at Dows and not been required to travel on Sunday. The Carrier denied this request on the contention that the term "regular pay," as used in Article 20, does not include Sunday overtime.

The claim was then referred to the Local Chairman and General Chairman for further handling, and was corrected to read one day of eight (8) hours at Dows rate, conforming with the provisions of Article 20. Payment of the corrected claim was also declined. Later, however, attempts were made by the Carrier to dispose of the claim by paying the call as originally requested by Mr. Field. The Committee declined to settle on that basis, re-affirming its contention that a full day's pay of eight hours is due.

POSITION OF EMPLOYEES: While working his regularly assigned position of Agent-Telegrapher at Dows, Iowa, Telegrapher M. H. Field placed a bid for and was assigned to the bulletined vacancy on the position of Agent-Telegrapher at Cone, Iowa, located on the same Cedar Rapids operating division. The bul-

Mr. Hood will allow an additional day at the rate of the Chicago position which Mr. Snodgrass left, for his travel time on March 31, April 1 and April 2, 1938, making a total of two days' pay for this transfer.

Yours truly,

(Signed) F. H. FREY"

The Board will note the following specific language in the above letter:

"* * * and the allowances under Article 20 are to cover merely the **loss in wages** resulting from such transfers * * *"

and in the same letter Mr. Frey wrote:

"* * * that only **the time lost** on basis of rate of pay of position leaving will be allowed * * *"

No objection whatever was raised by anyone, including the then General Chairman, nor the present General Chairman, to this position of the carrier, until receipt of claim covering the instant case. As a matter of fact, the local Chairman, L. C. O'Kelly, originally concurred in this position of the carrier when he first filed claim for the "regular pay" of the position (a call) April 11, 1943.

We contend Mr. Field was paid strictly in accordance with Article 20 and claim for additional pay over and above his "regular pay" should be denied.

OPINION OF BOARD: The claim in controversy involves the construction of Articles 4 (a) and 20 of the applicable rules.

The facts are not in dispute and show that M. H. Fields completed his day's work on Saturday, April 10, 1943, at Dows, Iowa and that evening boarded a train to go to Cone, Iowa, to assume the duties as Agent-Operator. The new position as advertised was for 7:15 A. M. to 4:15 P. M. daily except Sunday at 76 cents per hour. The position at Dows called for hours from 4:30 A. M. to 6:30 A. M. on Sunday at the rate of 78 cents per hour.

Articles 4 (a) and 20 are as follows:

Article 4 (a) Hours of Service—Basic Day.

"Except as specified in Section (1) of this Article, eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two (2) or more shifts are worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work."

Article 20 Transferring.

"Telegraphers transferred by the railway, or to accept bulletined positions, will be furnished free transportation for themselves, family and household goods and will be allowed regular pay while in transit and making such transfer; rate of pay to be based on position leaving."

The question to be decided is whether or not the employee is entitled to eight hours' pay at his Dows rate of 78 cents per hour, as travel time from Dows to Cone.

To determine this question necessitates making an interpretation of Article 20.

The employees assert that "regular pay" as used in the rule means a "day's pay" or an allowance of eight hours' pay.

The Carrier urges that the rule is intended to reimburse the employee for loss of time and earnings brought about by the transfer.

The Employees rely on two awards, Nos. 242 and 1586. In the former the employee was entitled to pay for "time lost" in transferring regardless of whether on the old or new position. He lost one day on the new position and was paid.

In the latter the rule protected the employe so that he would "suffer no loss of pay." There was one day lost on the transfer and the claim was allowed.

No award has been cited that is directly in point.

The Carrier cited Award 1399 where this Board decided that travel during the night time was not "during regular working hours." The regular assigned hours were from 7:00 A. M. to 4:00 P. M. They likewise cite Award No. 2304 where reference is made to a rule of Maintenance of Way employes. That rule refers to the "regular eight hour work period * * *." The word "regular" is used by the employes in a number of places in this record and in the rules. It has been used in the formation of other contracts between a carrier and its employes.

The word "regular" is defined as meaning (a) according to rule, (b) normal, (c) uniformly recurring, (d) orderly. From the use of this word in the record and in Article 20 and from the further fact that the rule presupposes pay to the employe while in transit, it appears that the transferring employe is entitled to be paid normal pay, or customary pay for the period in transit. The normal or customary pay for a day's work is "pay for eight hours."

This result is reinforced when the rule is examined closely. The only reference to the old employment is stated in these words: "rate of pay to be based on position leaving."

There is nothing in the rule about being made whole, or being paid, for time lost. It is stated that he is to be paid for time in transit. That for that time he should receive a normal day's pay for a day used in traveling.

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 claimant should be compensated for eight hours' time in transit at the rate of the position he left at Dows, Iowa. That a credit be allowed the Carrier for the amount already paid.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.