

Award No. 3200

Docket No. TE-3268

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Telegraphers on The Chicago, Rock Island & Pacific Railway,

1. That the Carrier violated the terms of the telegraphers' agreement, when, on January 10, 11, 12, 13 and 14, 1945 it permitted and required an employe not under the telegraphers' agreement to work seven hours on each of these days, 4:00 p.m. to 11:00 p.m., as telephoner-leverman in the Topeka, Kansas, tower during the absence of the 2nd trick telegrapher-telephoner-leverman, instead of assigning the 1st trick telegrapher-telephoner-leverman in the same tower to work three additional hours overtime, and by assigning the 3rd trick telegrapher-telephoner-leverman in the same tower to report and work four hours in advance of his regular starting time, on each of these days to perform this work that was improperly assigned to and performed by an employe not under the said agreement; and

2. That the 1st trick telegrapher-telephoner-leverman, W. E. Pearsall, hours 7:00 a.m. to 3:00 p.m., who was required to work one hour's overtime on the said five days, or until 4:00 p.m., is entitled to and shall be paid for three hours additional overtime on these days, or until 7:00 p.m.; and the 3rd trick telegrapher-telephoner-leverman, S. J. Keller, is entitled to and shall be paid for a call of four hours, 7:00 p.m. to 11:00 p.m. on these days.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date January 1, 1928, as to rates of pay and rules of working conditions is in effect between the parties to this dispute. The three positions of 1st, 2nd, and 3rd trick telegrapher-telephoner-levermen in the Topeka, Kansas, tower are covered by the said agreement and are assigned to work the following hours:

1st trick Hours 7:00 a.m. to 3:00 p.m.

2nd trick Hours 3:00 p.m. to 11:00 p.m.

3rd trick Hours 11:00 p.m. to 7:00 a.m.

On January 10, 11, 12, 13, and 14, 1945, the 2nd trick telegrapher-telephoner-leverman in this tower was allowed to be absent from duty on account of a death in his immediate family. No qualified extra employe under the telegraphers' agreement was available for assignment to this temporary vacancy, and to fill this void the Carrier removed the agent-telegrapher from his regular assigned position at Paxico, Kansas, hours 8:00 a.m. to 5:00 p.m., including the meal hour, unqualified for leverman duties, and assigned him

Each shift was filled by an employe covered by the telegraphers' agreement, i.e.

7:00 AM — 3:00 PM — W. E. Pearsall
 3:00 PM — 11:00 PM — W. H. Craven
 11:00 PM — 7:00 AM — S. J. Keller

Telegrapher Craven was properly filling in as relief telegrapher under the telegraphers' agreement, and he and the other two telegraphers protected the entire work available on the three shifts and assigned to employes covered by the telegraphers' agreement. The Signal Maintainer who was used as instructor to the inexperienced telegrapher, Craven, in the work at Topeka tower did not fill any assignment. Mr. Craven filled the vacancy, and properly so, under the telegraphers' agreement. There were only three shifts to be protected and three employes covered by the telegraphers' agreement filled them at the established rate of pay.

Although they have cited no rule requiring it, the employes claim Telegraphers Pearsall and Keller should have been worked three and fours' overtime respectively to instruct and assist Mr. Craven.

We do not understand on what basis the employes claim Pearsall and Keller are entitled to "overtime work" when there was no overtime involved in connection with the second shift. It was filled for the entire eight hours of the assignment by Telegrapher Craven. Having been placed on the position in lieu of an extra man, he, alone, was entitled to the pay of the position from 3:00 p.m. to 11:00 p.m., and he was paid therefor in accordance with the telegraphers' agreement.

We can find nothing in the agreement which obligates the carrier to use two men on one 8-hour job as they seem to contend in this case. So long as the vacancy was filled by an employe coming under the telegraphers' agreement—Mr. Craven—and he was paid the rate of that position, it is our position there can be no claim. If the signalman had been used alone on the second trick and a telegrapher was not used thereon, then perhaps a claim for some telegrapher denied the work would be justified, but in this case the position on the second trick was filled by a telegrapher holding seniority under the telegraphers' agreement.

In this connection it is the position of the Carrier that the use of a Signal Maintainer, an officer, or any other qualified employe of the Carrier to act as instructor to qualify an employe, when said employe is being paid the full rate of the position, is not in violation of any provision of the telegraphers' agreement. It should be borne in mind that this is not a case where an employe not holding seniority under the provisions of the governing labor agreement, was used to perform work covered by that agreement in the absence of an employe holding seniority under the provisions of the agreement.

There is no foundation to be found for this claim in any of the provisions of the telegraphers' labor agreement, any interpretation thereon, nor any practice followed in the past and it should be denied.

OPINION OF BOARD: The facts in this case disclose that while Carrier used a Signalman in the Tower that it also used an employe covered by the agreement and paid him in accordance with Rule (19 (f)). Under those facts and the circumstances of this particular case the claim should be denied.

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 claim should be denied in accordance with Opinion.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1946.