Award No. 3229
Docket No. TE-3218

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Railroad, that:

J. P. Owsley, regularly assigned agent-telegrapher at Waterville, Kansas shall be compensated for service performed by him on Sunday, August 27, 1944, in accordance with the time slip he rendered the Carrier for this day's service. Namely:

1 call for service 5:00 A.M. to 6:45 A.M.

1 call for service 6:45 A.M. to 8:45 A.M.

4 Hrs. 30 Mins. pro rata rate 8:45 A.M. to 1:15 P.M. or total of 4 hours' time and half and 4 hrs. and 30 mins. at pro rata rate.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of June 1, 1942, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

J. P. Owsley is the regularly assigned Agent-Telegrapher at Waterville, Kansas, a one-man station; his regular posted week day hours were 6:45 A.M. to 3:45 P.M., no Sunday assignment. The position of agent-telegrapher at Waterville, Kansas, is covered by said agreement.

On account of heavy rains and washouts between his station, Waterville, Kansas and Blue Rapids, Kansas some five miles east, it became necessary to make transfer of mail, express, baggage and passengers overland between these two stations on Sunday, August 27, 1944 between passenger trains 519 and 512 which required carrier to call Mr. Owsley at 5:00 A.M. to direct the trucks and cars hired to make this overland transfer, as well as handle necessary telegraph work, in connection therewith, which was completed and he was released at 1:30 P.M.

On August 27, 1944 Mr. Owsley filed time slip to cover this service for 4 hours (or two calls) @ 142½ rate, and 4 hours, 30 minutes at 95c rate (pro rata) based as follows:

5:00 A.M. to 6:45 A.M., 1 call (2 hours time and one half)

6:45 A.M. to 8:45 A.M., 1 call (2 hours time and one half)

8:45 A.M. to 1:30 P.M., 4 hours, 30 minutes pro rata rate.

was, in fact, given the call to perform the service in advance of the hours of the regular week-day assignment, and for that reason Rule 9 (c) has no application from a notified or called basis. Had Mr. Owsley been called for duty at 6:45 A.M., the Carrier does not dispute that Rule 9 (c) would apply, and for the first 2 hours of service he would have been entitled to 3 hours' pay, but when called in advance of the starting time of the week-day assignment, it is the Carrier's position that Rule 9 (d) specifically applies because of the provision that time worked before or after the limits of the regular week-day assignment will be paid for in accordance with overtime and call rules.

The foregoing application was accorded the claimant in this case because he was given 3 hours' pay for the service from 5:00 A.M. to 6:45 A.M., in line with Rules 9 (d) and 10 (c), and because he was not notified or called within the limits of the week-day assignment he was continued on duty at the regular pro rata hourly rate. This is in line with the long established custom and practice on this property, and the instant claim is the first instance, to the knowledge of the Carrier, where payment has been sought other than as allowed.

The attention of the Board is further called to the provision of Rule 9 (c) which provides for a continuation of the regular hourly rate following the application of the penalty rate "after the second hour of **each tour of duty.**"

In view of the foregoing, we respectfully submit that the claimant has been properly compensated under the applicable rules of the agreement, and for that reason the claim should be declined.

OPINION OF BOARD: There is no dispute here as to the facts. The only question is as to the interpretation of certain rules of the agreement, 9 (a), (c) and (d), and 10 (c), which read as follows:

> "SUNDAY AND HOLIDAY WORK: Rule 9 (a). Except in relay offices time worked on Sundays and the following holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of these holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid for at the regular pro rata hourly rate when the entire number of hours within the limits of the regular week day assignment are worked.
>
> (c) When notified or called to work on Sundays and the above specified holidays, a less number of hours than constitute a day's work within the limits of the regular week day assignment, employes shall be paid a minimum allowance of two hours at overtime rate for two hours work or less, and at the regular pro rata hourly rate after the second hour of each tour of duty.
>
> "(d) Time worked before or after the limits of the regular week day assignment will be paid for in accordance with overtime and call rules."
>
> "OVERTIME: Rule 10 (c). NOTIFIED OR CALLED: Employes notified or called to perform work not continuous with the ending of their regular work period will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis, except that the bulletined hours of service of telegraphers at offices where one shift only is employed, may be established to permit the meeting or starting of regular scheduled trains on their time-table not more than one hour before the commencing time shown in this agreement. Such time (one hour or less) required to report before 6:00 A.M. will be paid for on the minute basis at the rate of time and one-half."

The claimant had regularly assigned hours from 6:45 a.m. to 3:45 p.m. on week days. He had no Sunday assignment. On Sunday, August 27, 1944 he was called to work at 5:00 a.m. and worked until 1:15 p.m. The carrier paid him for one call figured as two hours at time and one-half, 5:00 a.m. to 7:00 a.m., and from 7:00 a.m. to 1:15 p.m. at the pro rata rate. The claimant contends that for the time between 5:00 a.m. and 6:45 a.m. he should have been paid on the basis of a call for a minimum of two hours at time and one-half on the theory that this was time worked before the hours of his regular assignment, and, in accordance with the provisions of Rule 9 (d) should have been paid for as provided in Rule 10 (c). Then at 6:45 a.m. which was the hour for the commencing of his regular week day assignment he claims that he came under the provisions of Rule 9 (c), and, not having been worked on Sunday within the limits of his regular week day assignment, was entitled to a minimum allowance of two hours at the overtime rate and thereafter at the regular pro rata rate.

The claimant was entitled to be paid under two separate rules. Firstly, he was entitled to be paid under the call rule for the work performed before the time fixed for the beginning of his regular assignment; secondly, he was entitled to pay for work performed commencing at 6:45 a.m., his regular assigned starting time on his week day assignment, which work, not having been continued to the limit of the regular week day assignment, should have been paid for as provided in Rule 9 (c). In no other way can the provisions of the various rules be harmonized, and can we be saved from falling into the error noted as Example F, cited in Interpretation No. 3 to Supplement No. 13 to General Order No. 27 of the Director General of Railroads, dated April 25, 1919.

This identical question has been decided in accordance with the views which we here express in two well reasoned opinions of this Board. Awards 813 and 2205. We have no question of the correctness of those decisions. Even if we did have, we would doubt the advisability of deciding the matter differently today. A construction of a rule which is not unreasonable should be maintained. For it is important that neither the carrier nor the employes should be left in uncertainty as to their rights. See the memorandum of Referee Garrison accompanying Award 1630.

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

The claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.