

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana, that C. B. Holzman, agent at Bryan, Texas, be paid in accordance with Rules 13-(c) and 13-(d) of the Telegraphers' Agreement for overtime work performed in excess of the regular assigned hours of the position on certain days between September 5, 1941, and October 4, 1941, for which claim was made.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective Oct. 15, 1940 is on file with the National Railroad Adjustment Board.

C. B. Holzman agent, Bryan, Texas claims payment for overtime worked Sept. 5, 6, 9, 12, 15, 17, 18, 19, 20, 22, 27 and October 2, 4, 1941. Payment is declined by the carrier under the contention that the position of Agent Bryan is a monthly rated position and the monthly rate covers all service performed.

POSITION OF EMPLOYES: The rules of the agreement support the claim and there is nothing whatever in the agreement which can or will sustain the contention of the carrier. The action of the carrier in denying payment of this claim is arbitrary and in violation of the agreement. An examination of the rules of the contract which concern the claim will indicate the correctness of our contention.

For ready convenience we quote:

Rule 1

SCOPE

(a) This agreement will govern the employment and compensation of Relay Office managers, assistant managers, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, printer and traffic supervisors, operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices; and such agents and assistant agents (freight and ticket, as may be designated herein).

rendered in an given month. As of June 9, 1932 telegraph duties were added to the position.

The Carrier deducted an amount equal to the two days pro rata of the stated monthly compensation in each of the ten months July 1932 to April 1933, inclusive, and as of May 1st, 1933 established basic monthly rate of \$230.00 for the position, less 10 per cent or \$207.00 net.

It is shown that Agent Reiss actually worked on the two days in which said payroll deductions were made in each month, and received \$207.75 net for his services in each of the months of June 1932 to March 1933, inclusive, and \$190.52 in April 1933; and that he has actually been compensated for each month's service \$207.00 net from and after May 1, 1933. There is no dispute with respect to the adequacy of monthly compensation from May 1, 1933, forward.

As of the date that telegraph duties were added (June 9, 1932) the position in question was thereby brought within the scope of agreement between the parties and subject to the terms thereof."

In conclusion the attention of the Board is directed to Mediation Agreement Case A-2070, negotiated at Chicago, Illinois, as of July 13, 1945 by the participating Carriers, of which this Carrier was one, and The Order of Railroad Telegraphers pertaining to a rest day rule. Copy of this agreement minus Appendicies (A) and (B), is submitted and marked Carrier's Exhibit "A". Particular attention of the Board is directed to Article 2 of that Agreement, which reads as follows:

"Article 2. Nothing in this agreement shall apply to positions paid on a monthly basis unless otherwise agreed between the management and the committee on the individual carrier."

The above furnishes further conclusive evidence that positions paid on a monthly basis are recognized by the parties as being in an entirely different category from other positions covered by the Telegraphers' Agreement, and supports the statements of the Carrier that positions of agent at star (*) stations compensated on a monthly basis are not entitled to overtime, that the monthly rate paid covers all services rendered, and that this has been the mutual understanding of the parties through the years.

It is clearly evident from the foregoing that the contention and claim of the Employees that the position of supervisory agent at Bryan, which station is a star (*) agency compensated on a monthly basis to cover all service rendered, is entitled to overtime for service performed in excess of eight hours, is without basis; that the record definitely and conclusively shows that it has been mutually recognized and understood by the parties that the occupants of such positions are not entitled to overtime, and that it has not been the practice for the Employees to claim nor for the Carrier to allow overtime on such positions, in view of which this claim should be denied.

The submission of this case to the Adjustment Board is without question an attempt on the part of the Employees to obtain a new rule providing that monthly rated positions of agent at star (*) agencies will receive overtime contrary to the mutual understanding of the parties over the years as evidenced by the information contained in the "Position of Carrier". As the granting of new rules is a function not coming within the province of the Adjustment Board, the contention and accompanying claim of the Employees should be dismissed for lack of jurisdiction.

OPINION OF BOARD: The issues in this claim are identical with those in Docket Number TE-3196, Award Number 3405, and for the reasons stated in that award the claim is 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 Employees involved in this dispute are respectively carrier and employees 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 is 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 23rd day of January, 1947.