

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo, that regular relief operator R. I. Brooks, regularly assigned to work 2nd trick, 3:00 P. M. to 11:00 P. M. at Latimer Tower, on March 1, 1944, 3rd trick, 11:00 P. M. to 7:00 A. M. at Latimer Tower on March 2, 1944, and at Andover Tower on March 3, 1944, but who was required to suspend work on his regular position on these three days and work the position of agent-telegrapher at Williamsfield 8:00 A. M. to 5:00 P. M. on each of these days, shall be paid at the rate of time and one-half for the hours he was required to work outside of his regular assigned hours on the agent-telegrapher position at Williamsfield, and at pro rata rate for travel and waiting time consumed going to and from Williamsfield and his home station at Kinsman.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of February 1, 1943, as to rules of working conditions, and December 27, 1943, as to rates of pay is in effect between the parties to this dispute.

The provisions of this agreement pertinent to this dispute reads as follows:

ARTICLE 4

(a) Except as provided in Articles 3 and 8(d) time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

(b) All service continuous with and in advance of the regular working hours, shall be paid for at time and one-half rate on the actual minute basis.

(c) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

ARTICLE 5

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours' pay

The situation dealt with in Award No. 815 is identical with that on this carrier, although we recognize that there is some slight difference in the respective rules. In the instant dispute the same circumstances prevailed; viz., Agent-Telegrapher at Williamsfield had reported sick, no qualified extra man was available and it was necessary to protect service at Williamsfield. It was necessary to divert Claimant Brooks to fill the vacancy. It was also necessary to work the regular men at Latimer Tower and at Andover Tower, who otherwise would have been relieved by the claimant, on their respective rest days and pay them at the time and one-half rates.

CONCLUSION

The claim of the employees in this dispute should be denied for the following reasons:

1. The General Committee has had its day in court and we believe the controversy here is *res adjudicata* by reason of Awards 2511 and 3132 which cover the same principle involved herein and settled the issue.
2. There is no rule in the agreement restricting the carrier's right to divert regularly assigned employees in emergencies and under such circumstances the carrier is obligated to pay only the higher rate.
3. Operator Brooks was used in an emergency and compensated in accordance with the rules of the agreement.
4. Claimant did not lose any time because of this emergency. He performed service on each of the six days during the week.
5. Article 13 of the agreement is controlling.
6. The carrier contends that when this case is reduced to its essential details only one fact stands out, namely that Operator Brooks was diverted and used in an emergency and compensated in accordance with the provisions of Article 13 and practices thereunder.
7. It is the carrier's final contention that the claim in this case is entirely without merit and should be denied.

OPINION OF BOARD: Mr. Brooks was regularly assigned to relief positions. On March 1, 2, 3, 1944, he was taken from his regular assignment and required to work the agency at Williamsfield. He claims pay as stated in the submission.

The Carrier contends that payment is properly made under Rule 13(a), entitled "Regularly Assigned Employees Doing Relief Work."

There is no question but that the Agent at Williamsfield was sick and a relief man necessary at that point. The Organization contends that there were three extra telegraphers available on the extra lists and not working. There is no question but that one of these was not qualified for the Williamsfield job and that the two remaining ones would not accept assignment outside of their home town of Ashtabula.

The Organization contends that the rules do not permit any extra employee to decline service for personal reasons; that he must accept work arising anywhere in the seniority district; that any agreement between the Carrier and the employees as to limited service is without rule sanction; and that accordingly the men were available. This argument goes to the right of the employee to remain on the extra list when refusing to accept unlimited service. It does not negative the fact that the extra employees here were not available for service at Williamsfield. This brings the claim squarely within the confines of our Awards 2511 and 3132, denying claims involving these same parties, the same rules, and substantially the same factual situation.

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 the employee is not entitled to the pay claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1947.