

Award No. 3439

Docket No. TE-3320

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 the third trick, 11:00 P. M. to 7:00 A. M., at Latimer Tower on March 9, 1944, and at Andover Tower on March 10, 1944, but who was required to suspend work on his regular position on these two days and work on the position of second trick telegrapher-leverman at Andover Tower 3:00 P. M. to 11:00 P. M. on each of these two 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 second trick position in the Andover Tower, and at the pro rata rate for travel and waiting time consumed going to and from the Andover Tower and his home station at Kinsman.

EMPLOYEES' 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.

hours of his regular second trick assignment and time and one-half for service performed during the assigned hours of the first trick Drawbridge-tender-Leverman whom he relieved. Your Board denied the claim and in the Opinion of the Board stated:

"In the opinion of the Division, Rule 9 does modify Rule 5 as well as Rule 15 and Rule 16 on which the petitioner also relies in support of this claim. It is not denied that the claimant was in the circumstances of the present dispute assigned to relief service. It seems equally clear that the assignment was made necessary by an emergency; the sickness of Clark, the unavailability of employees to fill the assignment, and the necessity of protecting the service during Clark's assigned hours. . . ."

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., second trick operator at Andover Tower had reported sick, no qualified extra man was available and it was necessary to protect service at Andover Tower continuously throughout the twenty-four hours each day. It was necessary to divert Claimant Brooks to fill the second trick 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: The issue here presented is identical with that presented in TE-3319, Award Number 3438. For the reasons there given 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 for the reasons stated in the opinion, the claim is denied.

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.