

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY — PACIFIC LINES

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Aaron Hytner, Telegrapher-Towerman, Burbank Junction, California, be compensated for five hours at time and one-half rate each date September 2nd to 7th, 1944, inclusive, and for six hours at time and one-half rate each date, September 8th to 17th, 1944, inclusive, because of being relieved on his assigned position by a signal maintainer and required to work other than his assigned position and assigned hours.

EMPLOYES' STATEMENT OF FACTS: Aaron Hytner, assigned to position of Fifth Telegrapher-Towerman, position No. 5, at Burbank Junction, rate of pay 96½ cents per hour, assigned hours 6:00 A.M. to 2:00 P.M. daily, was ordered and required to work 1:00 A.M. to 9:00 A.M. daily, September 2nd to September 7th, inclusive, 1944. During this period, he was compensated eight hours pro rata rate and one hour at time and one-half rate due to violation of Rule 12 (b) Telegraphers' Agreement, providing no shift will have a starting time after 12 midnight.

From September 8th to 17th, inclusive, 1944, he was required to work 12:00 midnight to 8:00 A.M. daily and was paid eight hours at pro rata rate therefor.

The following were the regular assigned positions of Telegrapher-Towerman at Burbank Junction—

- Position No. 1—8:00 A.M. to 4:00 P.M.
- Position No. 2—4:00 P.M. to 12:01 A.M.
- Position No. 3—12:01 A.M. to 8:00 A.M.
- Position No. 4—5:00 P.M. to 1:00 A.M.
- Position No. 5—6:00 A.M. to 2:00 P.M.

During the period Claimant Hytner was used off his assigned hours, September 2nd to 17th, inclusive, 1944, a signal maintainer was used to fill the position, this employe not being carried on the Telegraphers' seniority list of the Los Angeles Division.

From September 2nd to 17th, inclusive, 1944, the incumbent of position No. 3, Telegrapher-Towerman Gutshall, with assigned hours 12:01 A.M. to 8:00 A.M., was ill.

POSITION OF EMPLOYES: The claim is presented under Rules 2, 12, 15 and 16, Telegraphers' Agreement effective September 1, 1927.

The claimant was not required to suspend work during regular work hours in order to absorb overtime. He was taken from his regular assignment to relieve on a position having hours other than his regular hours, pursuant to Rule 9; therefore, it is evident that Rule 15 is in no way applicable and in no way supports the claim in this docket.

The call rule, namely Rule 16, is likewise entirely immaterial to the instant case, in the light of Rule 9.

It follows therefore that after due consideration of the rules cited by the petitioner allegedly in support of the claim, the conclusion is inevitable that none of the said rules are in any way applicable or in any way support the claim in this docket.

The Carrier submits that Award 815 of this division conclusively supports the Carrier's position in this docket. The said award involved the same parties as are involved in the instant case, and likewise involved the same agreement as is involved in the instant case. The division will note that the fact situation in Award 815 is definitely similar to the fact situation involved in the instant case. In Award 815 the claimant was taken from his regular assignment and used to relieve on a position with hours other than his regular assignment; in other words, a situation similar to that involved in the instant case.

In Award 815 the petitioner relied upon Rules 5, 14, 15 and 16. The division, with Referee William H. Spencer sitting as a member thereof, rejected the petitioner's position, and denied the claim on the basis that Rule 9 was the controlling provision of the Agreement, and the claimant having been paid in accordance with said rule, the Agreement was in all respects complied with.

CONCLUSION: The Carrier submits that Rule 9 of the Agreement is controlling in the instant case, and having compensated the claimant during the period September 2 to 17, inclusive, 1944, in accordance with said rule, the Carrier strictly complied with the Agreement, and therefore the claim is without basis and should be denied.

OPINION OF BOARD: Claimant was assigned to the position of Telegrapher-Towerman, position No. 5, 6:00 A.M. to 2:00 P.M. daily, at Burbank Junction, California. There were five regular assigned positions at this point, the first three of which were around the clock positions. On September 2, 1944, the occupant of position No. 3 became suddenly ill and was unable to protect his assignment until September 18, 1944. A qualified Morse telegrapher being required on position No. 3, and there being no extra qualified Morse telegrapher available during this period, claimant was used as relief on position No. 3. From September 2nd to September 7th, inclusive, the Carrier erroneously called claimant for work 1:00 A.M. to 9:00 A.M., instead of 12:00 midnight to 8:00 A.M. This error was corrected on September 8th and the penalties for this violation of the starting time rule were paid. Claimant's position was filled by a signal maintainer, it not being necessary that he be a qualified Morse telegrapher in view of the fact that another qualified Morse telegrapher was on duty at all times during claimant's regularly assigned tour of duty.

The Organization contends that claimant is entitled to the time and one-half rate for the time he worked prior to the starting time of his regularly assigned position on the days specified in the claim. Rules 2, 12, 15 and 16, Telegraphers' Agreement, are relied upon to sustain the claim.

We think that these rules, standing alone, would sustain an affirmative award. The Carrier contends, however, that Rule 9 modifies the above cited rules and warrants a denial of the case presently before us. The applicability of Rule 9 to the case consequently determines the result. Rule 9 provides in part:

"Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency, and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation shall be paid an amount sufficient to reimburse them for such loss * * *."

It is evident from the record that the illness of the occupant of position No. 3, the unavailability of a qualified extra employe and the necessity of protecting claimant's regular assignment with a qualified employe created an emergency within the meaning of Rule 9. This being true, claimant was entitled to payment at straight time only for the work performed on position No. 3. This result, and the applicability of Rule 9 thereto, is dictated by Awards 815, 2444, 2511 and 3132. Claimant having been paid the straight time rate of his assignment, the requirements of the Agreement have been met insofar as his rights thereunder are concerned. It is not necessary to pass on the correctness of the use of a signal maintainer on the position.

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 parties waived oral hearing thereon;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.