

**Award No. 3631**

**Docket No. TE-3602**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Grady Lewis, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE KENTUCKY & INDIANA TERMINAL RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Order of Railroad Telegraphers on the Kentucky & Indiana Terminal Railroad, that Telegraphers R. O. Mulhall and J. S. Stayton, regularly assigned to second and first tricks, respectively, at "YD" Telegraph Office, Louisville, Kentucky, on June 22, 23 and 24, 1946, be paid at the rate of time and one-half for four hours each on each of the above dates under the rules of the Telegraphers' Agreement, because when the third trick telegrapher in that office was used elsewhere, and the telegrapher assigned to relieve him was unable, due to illness, to protect his assignment on June 22, 23 and 24, 1946, the Carrier, instead of using each of the claimants four hours in addition to their regular assignments, failed to fill the third trick position on June 22, 23 and 24, 1946.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement, bearing effective date of June 15, 1945, is in effect between the parties to this dispute. "YD" office is a continuously operated telegraph and train order office located in the Youngstown Yard, Louisville, Kentucky, and furnishes, for the greater part, telegraph and train order service to the tenant lines entering this terminal, two divisions of the Southern Railway, the Baltimore & Ohio Railroad and the Chicago, Indianapolis & Louisville Railway. A double telegraph table is provided, and three tricks of eight hours each are regularly assigned to each side of the table, two men on each trick. At the time this claim arose the assignments were distinguished by their starting times, i.e., 7:00 A.M., 3:00 P.M. and 11:00 P.M. on the one hand, and 7:30 A.M., 3:30 P.M. and 11:30 P.M. on the other. We are here considering the 7:00 A.M., 3:00 P.M. and 11:00 P.M. assignments. There is also a regular assigned relief position, the incumbent relieving each of the other six men one day each week.

On June 21, 1946, the regular third trick, 11:00 P.M. to 7:00 A.M., telegrapher, who is also the senior extra dispatcher, worked his regular "YD" assignment and was notified to work as dispatcher 11:00 P.M. to 7:00 A.M. for three days beginning June 22, while the regular third trick dispatcher took his rest day and relieved the other two dispatchers one day each on their rest days. The regular relief telegrapher for "YD" office was notified to work third trick at "YD" office June 22, 23 and 24, 1946, and the occupants of the tricks due to be relieved on those dates as their rest days were notified to work their rest days on these days. Prior to 11:00 P.M. on June 22 the relief man reported sick and the Carrier made no provision to fill the vacancy thus created.

**POSITION OF EMPLOYEES:** As the Employees' Statement of Facts indicates, "YD" office is a continuously operated office, handling a large volume of telegraph and train order work incident to the operation of the

out that the six telegraphers on the three tricks perform the same kind of work and that all six operators handle train orders. Furthermore, Carrier's Statement of Facts reveals that as late as December 31, 1945, one of the two telegraphers on the second shift was employed for six days per week only, and one of the two telegraphers on the third trick was employed for six days per week only. Of no little significance we assert is the fact that Carrier's records reveal that one telegrapher performed the second trick work at "YD" office one night a week for more than four years without delays, and one telegrapher performed the third trick work at "YD" office one night a week for more than five years without delays. The blanking of Telegrapher Hammond's position did not result in delays to any trains, or endanger the lives of any passengers or employes, or subject freight to any risk of damage. The service was protected at YD office. In view of these facts, any charge that the instant claim constituted an emergency justifying Carrier's use of Claimants for twelve hours each on the dates involved is without foundation. The Organization's claim should, therefore, be denied.

**OPINION OF BOARD:** There is no dispute of fact in this case.

The regular telegrapher assigned to the 11:00 p.m. to 7:00 a.m. trick, under instructions from Carrier officials, worked as a dispatcher, with which craft he also held seniority. The relief telegrapher assigned to work the vacancy created by the diversion of the regular telegrapher was ill and did not report for duty. The position was thereupon blanked for three days.

Carrier, in its submission, states: "The sole question raised by Carrier is whether Claimants have, under the Hours of Service Law the right to perform the service which gave rise to the claim." That question is answered in the affirmative, by this Division, in Awards 2827 and 3488.

There remains the question of whether Claimants are entitled to overtime or pro rata rates of pay. That question is determined in favor of overtime rate in Awards 2467 and 2980, as well as 2827. Since these Claimants had the right to perform the service when the vacancy occurred, and since the going rate of pay for Claimants when available for such service is fixed by Rule 7 at overtime basis, the considerations moving this Division to make the last above mentioned awards is equally applicable here.

**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

That the Carrier violated the terms of the Agreement in failing to assign the blanked shift to Claimants.

#### **AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.