

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 Mr. J. J. Mathy, second telegrapher-clerk, Surf, California, be compensated eight hours at overtime rate of his assigned position each Sunday, April 21, 28, May 5, 12, 19 and 26, 1946, account not permitted to assume his assigned position which was worked on these days by an extra employe who received eight hours' compensation at overtime rate.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employes, represented by the petitioner, bearing an effective date of December 1, 1944 (hereinafter referred to as the agreement), a copy of which is on file with this Board and is hereby made a part of this dispute.

2. J. J. Mathy (hereinafter referred to as the claimant) being the successful applicant, was on March 22, 1946, awarded position of second telegrapher-clerk at Surf, California, a station on the carrier's Coast Division; the assigned hours of said position being from 4:00 P. M. to 12:00 Midnight, daily except Sunday (the latter being the assigned relief day), and the rate of pay \$1.1125 per hour. At that time, the claimant was the regularly assigned occupant of position of agent-telegrapher at Surf; the assigned hours of said position being from 9:00 A. M. to 5:00 P. M., daily except Sundays and holidays, and the rate of pay thereof \$1.135 per hour.

3. It was not possible to relieve the claimant on the position of agent-telegrapher to enable him to assume duty on the position of second telegrapher-clerk, by reason of the fact that a qualified extra or relief employe was not available for such relief and, therefore, since the position of agent-telegrapher was necessary to the carrier's operations, the claimant was retained thereon until May 31, 1946, on which date a qualified employe became available. At the close of his tour of duty on May 31, 1946, the claimant was relieved on the position of agent-telegrapher and, beginning June 1, 1946, pursuant to his request, he was granted a leave of absence account personal reasons.

4. The employe who filled the position of second telegrapher-clerk during the period April 21 to May 31, inclusive, 1946, (the period involved in this claim) performed eight (8) hours' service on each Sunday, April 21, 28, May 5, 12, 19 and 26, (assigned relief days for the position) due to the fact

A review of this entire matter will establish that what the petitioner is contending for in this docket is for the payment of a triple penalty, namely, the two penalties specifically provided in Rule 19, Section (d), paragraph 6, that is (1), the highest rate of pay, and (2), the \$2.00 per calendar day allowance, and in addition thereto, (3), the overtime compensation that was received by the extra employe who occupied the position of second telegrapher-clerk for service performed on Sundays, the assigned rest day of said position. In support of such contention the petitioner's general chairman in his letter of August 27, 1946, to carrier's assistant manager of personnel, stated in part:

"Under the provisions of Rule 19(d)-6, thirty days after being assigned, Mr. Mathy was entitled to receive the established compensation of his assigned position or the one upon which he was held, whichever is the greater of the two. Mr. Mathy was ready for service on his assigned position but the Carrier held him on the agency position which did not perform service on Sundays. Hence, no compensation was paid for these days and he was prevented from performing service on his assigned position which received compensation each Sunday for eight hours at overtime rate.

Since the compensation of the second telegrapher was greater on each Sunday than the agent, who received nothing, Mr. Mathy is entitled to payment of eight hours at overtime rate on the dates claimed."

In taking the position set forth above, the petitioner fails entirely to give consideration to the language of the applicable rule, namely, Rule 19, Section (d), paragraph 6 of the current agreement, which as hereinbefore established, merely provides for the payment of the established rate of the position to which assigned or the established rate of the position worked—whichever established rate is the greater—in addition to the \$2.00 per calendar day allowance. The petitioner by such position is in the final analysis, substituting the word "compensation" for the word "rate," or in other words, is endeavoring to write into the rule certain language that does not appear therein and was not agreed to by the parties. The provisions of the applicable rule are clear and unambiguous; they completely and specifically provide for the penalty payments to be made to a successful applicant who is not placed on his newly assigned position within the thirty day period set forth therein. The claimant has been paid strictly in accordance with the provisions of the rule and the claim for additional compensation is not supported by any provision of the current agreement.

The carrier having established that the claim in this docket is entirely without basis, respectfully submits that it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant, J. J. Mathy, was, prior to March 22, 1946, the regularly assigned occupant of the position of Agent-Telegrapher at Surf, California. The assigned hours of his position being from 9:00 A. M. to 5:00 P. M. daily except Sundays and holidays. He had applied for the position of second Telegrapher-Clerk at Surf and was the successful applicant. On March 22, 1946, he was awarded that position and assigned thereto. The assigned hours of the position of second Telegrapher-Clerk were from 4:00 P. M. to 12:00 Midnight, daily except Sundays, the latter being the assigned relief day.

No qualified or relief employe being available, and the position of Agent-Telegrapher at Surf being necessary to the Carrier's operations, Claimant was retained thereon until May 31, 1946, when a qualified employe became available. The employe who filled the position of second Telegrapher-Clerk during the period April 21, 1946 to May 31, 1946, inclusive, performed eight hours service on each of the following Sundays: April 21, 28 and May 5, 12, 19 and 26, which are assigned relief days for that position. This resulted from the fact that there was no relief Telegrapher available to relieve him

on those days. For this service he was compensated at one and one-half times the regular rate of the position, as provided by Rule 7 Sec. (a) Para. 1 of the Agreement. During this period Claimant worked as Agent-Telegrapher and was paid the rate of that position, which is greater than that of second Telegrapher-Clerk. However, he was not required to work on any Sunday during this period. In addition to the rate of his position he was, during the period from April 22 to May 31, 1946, inclusive, allowed \$2.00 each calendar day as provided under Rule 19, Sec. (d) Para. 6 of the Agreement.

Based on these facts claim is made for J. J. Mathy, the successful applicant for the position of second Telegrapher-Clerk, for eight hours pay at time and one-half for each Sunday between April 21, 1946 and May 31, 1946, inclusive, when the relief Telegrapher filling that position worked, which are April 21 and 28 and May 5, 12, 19 and 26. The claim is based on the fact that Claimant was not allowed to assume his awarded position which, on those dates, was worked by a relief employe.

Rule 19, Sec. (d) 6, provides:

"A successful applicant shall be placed on his newly assigned position within thirty (30) days from the date of the assignment notice, or be compensated thereafter on the basis of the established rate of either that position or the position on which he works, whichever rate is the greater, and in addition thereto an expense allowance of two dollars (\$2.00) per calendar day."

Under this rule the Carrier had 30 days within which to place the Claimant on his new position. This covered the period from March 22, 1946 to April 20, 1946, inclusive, and no claim is made for that period. Thereafter Carrier was required to pay Claimant on the basis of the established rate of either the new position or the position on which he worked, depending upon which was greater and, in addition thereto, an expense allowance of two dollars per calendar day. This latter was paid and the only question is whether or not the overtime worked by the occupant on the second Telegrapher-Clerk position increased the established rate thereof. If it did not have that effect then the claim is not properly made for the established rate for the Agent-Telegrapher, which Claimant was paid, is greater than that of the second Telegrapher-Clerk.

Certain rules of the parties' effective Agreement provide for the payment of overtime, or time and one-half the regular established rate of a position, when work is performed on certain days or under certain conditions or circumstances. But this does not change the established rate of either of these positions for those rules apply equally to both. Nor does the fact that the second Telegrapher-Clerk had the opportunity to work on his relief day during the period Claimant was not actually placed on his assigned position, and for which he here makes claim, change the situation. While this had the effect of increasing the total pay received by the second Telegrapher-Clerk during this period it did not have the effect of changing the established rate of that position, which is the basis of any right which Claimant may have under Rule 19 (d) 6, as he has already received the arbitrary expense allowance of two dollars per calendar day as therein provided. Since Claimant has been paid on the basis of the higher rate of the two positions and, in addition thereto, the two dollars per day arbitrary expense allowance we find the Carrier has fully complied with its obligation under Rule 19 (d) 6 and that the claim is without merit.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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 here; and

That the Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.