

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Company that C. K. Glenn, regularly assigned second trick clerk-telegrapher at Clarendon, Arkansas, assigned hours 2:00 P.M. to 10:00 P.M., with thirty minutes overtime daily 10:00 P.M. to 10:30 P.M., who was used to perform relief work on the agent-telegrapher position in the same office, assigned hours 6:30 A.M. to 2:30 P.M., with one hour overtime daily 2:30 to 3:30 P.M., October 9, 1947, through October 20, 1947, except on October 12 and 19 assigned rest days on the position, and again October 4, 1948, through October 18, 1948, except on October 10 and 17 assigned rest days on the position, under the provisions of revised Article 16 of the Telegraphers' Agreement, shall be compensated at the rate of time and one-half for the one hour overtime he worked on each of these days while filling the agent-telegrapher position, in accordance with the rules of the Agreement, instead of pro rata rate at which he was paid.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement as to rules of working conditions and rates of pay, bearing date of December 1, 1934, in effect between the parties to this dispute. Rates of pay have been increased since the effective date of the agreement, and Article 16 was revised effective December 1, 1944.

The following positions, assigned hours, and rates of pay, are in effect at the Carrier's Clarendon, Arkansas, station:

Agent-Telegrapher 6:30 AM to 2:30 PM, one hour overtime daily 2:30 PM to 3:30 PM, rate of pay \$1.48 per hour.

Second trick Clerk-Telegrapher, 2:00 PM to 10:00 PM, thirty minutes overtime daily 10:00 PM to 10:30 PM, rate of pay \$1.20 per hour.

Third trick Clerk-Telegrapher, 10:30 PM to 6:30 AM, rate of pay \$1.20 per hour.

Under the provisions of the second paragraph of Revised Article 16 of the Telegraphers' Agreement, regularly assigned Clerk-Telegrapher C. K. Glenn was required to perform relief work on the agent-telegrapher position, while the regularly assigned agent-telegrapher was on vacation, October 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 1947, and again on October 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 1948, working nine (9) consecutive hours on each of these days.

The Employees lay stress upon the fact that 9 consecutive hours were worked in this case. But the rules contain no provision to the effect that if nine consecutive hours are worked the ninth hour shall be paid at time and one-half rate. The provisions of both 6-1 and 16 in question are "time worked in excess of eight hours on any day", and not time after eight hours; and these provisions are never applied to require a second penalty based on the same period of time. They are merely safeguards to prevent any combination of circumstances that might otherwise require employees to work in excess of 8 hours at pro rata rate in a day. Time worked outside of regularly assigned hours is paid for under Article 6-3, 6-4, or 16 as the circumstances may require, but Article 6-1 is never also applied. For instance, an employee assigned to work 2:00 PM to 10:00 PM may be called to work at 12:00 noon and work continuously until 10:00 PM. He would be paid time and one-half rate for the two hours 12:00 to 2:00 PM, under Article 6-4, but he would not also be paid time and one-half for the ninth and tenth hours worked.

This was pointed out by the Board in Award 3780, and it is evident from the decision that if the shift worked outside of assigned hours in that case had been from 8:00 AM to 4:00 PM and thus continuous with the other shift worked, the decision would have been the same.

Thus the fact that nine consecutive hours were worked in the present case is not evidence that the ninth hour should be paid at time and one-half rate. The penalty provided in the special rule governing employees working on positions other than their own in the same office was applied to the first hours worked, and such time could not be used to compute a second penalty for the last hour worked without ignoring the plain provisions of the rule.

Telegrapher Glenn did not work in excess of 8 hours at pro rata rate on any day. He was properly paid 7½ hours at time and one-half and 1½ hours at pro rata rate.

The claim is not supported by the rules nor justified for any reason, and the Carrier, therefore respectfully requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant C. K. Glenn was regularly assigned Clerk-Telegrapher with hours 2:00 P.M. to 10:30 P.M., at Clarendon, Arkansas. During the time in question the Agent-telegrapher at that station, hours 6:30 A.M. to 3:30 P.M. was off because of sickness and Claimant was required to fill his position. While filling this position Claimant was paid at the rate of time and one-half for time worked from 6:30 A.M. to 2:00 P.M., which was outside his regular hours, and straight time rate for time worked from 2:00 to 3:30 P.M. which was time within his regular hours. The claim here is for time and one-half rate for the time worked from 2:30 P.M. to 3:30 P.M. on the basis that it is time worked in excess of eight hours.

The rule applicable to the issue here is Revised Article 16-2, which we quote:

"A regularly assigned employee used to perform relief or emergency work in the office to which assigned will be paid the rate of the position worked or the rate of the position to which regularly assigned, whichever is the greater, and will be paid at the rate of time and one-half only for the hours worked outside of his regularly assigned hours or for the time worked in excess of eight hours on any day." (Emphasis added)

This language is clear and unambiguous, and Revised Article 16-2 relates explicitly to a factual situation such as in the instant case. The claimant was regularly assigned and used to perform relief or emergency work in the office to which assigned. He was paid at the rate of time and one-half only for the hours worked outside his regularly assigned hours, since that time was greater than the time worked in excess of eight hours in any day. He was paid this highest rate of the two alternative rates allowed under Revised Article 16-2.

The Employes claim that since Claimant worked nine consecutive hours, the ninth hour should also be paid at the rate of time and one-half under Article 6, the overtime Rule. If their contention was correct the Revised Article 16-2 would have not used the constricting words "only" and "or" underlined in the Article quoted. We are of the opinion that Revised Article 16-2 is the only Rule of the Agreement applicable to the factual situation presented in this claim for to hold otherwise would require a second penalty based on the same period of time, and was not contemplated by the Agreement.

This Board has, in Award No. 3780, interpreted the Article involved in this dispute. The facts and issues in that case were substantially the same as in the instant case, and we concur with the reasoning and decision in that Award.

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 hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.