

Award No. 4883

Docket No. TE-4768

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD
(BUFFALO AND EAST)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

(a) The Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted Mr. H. V. Dunphy, the regularly assigned Agent-telegrapher at Ridgeland, New York, to suspend work on his regular position and relieve Telegrapher-leverman Mr. G. M. Parker on his rest day at interlocking Signal Station No. 29, Monday, January 17, 1949.

(b) In consequence of such violation, Mr. H. V. Dunphy shall be paid 8 hours at the straight rate for being suspended from work on his regularly assigned position as Agent at Ridgeland, plus time and one-half rate of pay for 8 hours' work performed outside his regularly assigned hours on another position; in addition to travel and waiting time at the higher rate of pay.

(c) That Telegrapher-leverman G. M. Parker shall be paid the difference between the time and one-half rate to which he is entitled and the pro rata rate of pay which he was paid for 8 hours' work denied on January 17, 1949, on which date he was improperly relieved from duty on his assigned day of rest.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, last revised July 1, 1948, as to rules and October 1, 1948 as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Telegrapher-leverman G. M. Parker is regularly assigned to the second trick position at Interlocking Signal Station No. 29 on the Syracuse Division, located in the City of Rochester, New York. His regularly assigned hours of duty are from 4:00 P.M. to 12:00 midnight. His regularly assigned rest day each week at the time of the claim was Monday.

Agent H. V. Dunphy is regularly assigned to the position of Agent-telegrapher at Ridgeland, New York, located on the Syracuse Division. His regularly assigned hours are 8:00 A.M. to 5:00 P.M., one hour for lunch, and his regularly assigned rest day each week at the time of the claim was Sunday.

regular course of his employment. The reasoning contained in Award 3193 supports this holding and is reaffirmed. See Awards 2695, 3049, 3222, 3251, 3271, 4196. Awards by other referees to the same effect are: 2346 (Burque), 2823 (Shake), 2859 (Youngdahl), 3232 (Thaxter), 3371, 3375, 3376 (Tipton), 3504, 3505 (Douglas), 3609 (Rudolph), 3745, 3770, 3837 (Wonklo), 3876, 3910 (Yeager), 3890 (Swaim), and 4037 (Parker).

"The position of the Carrier is correct. An affirmative award at the pro rata rate is in order."

CONCLUSION: The evidence herein presented conclusively shows that—

1. The Carrier did not violate any of the provisions of the Telegraphers' Agreement.
2. Agent-telegrapher Dunphy was not required to suspend work on his regular position at Ridgeland for the purpose of relieving Telegrapher-leverman Parker on the latter's relief day at Signal Station 29.
3. Agent-telegrapher Dunphy is not entitled to and has made no claim for any of the additional payments as set forth in the Employees' Statement of Claim.
4. The payment of a day's pay to Telegrapher-leverman Parker is a proper settlement under the circumstances in this case and has been so recognized by the board in similar cases.

OPINION OF BOARD: Telegrapher-Leverman G. M. Parker is regularly assigned to the second trick position at Interlocking Signal Station No. 29, Rochester, New York. His assigned hours are 4:00 P.M. to 12:00 midnight, with Monday as rest day. Agent H. V. Dunphy is regularly assigned to the position of agent-telegrapher at Ridgeland, New York. On Monday, January 17, 1949, the regular relief man assigned to cover relief at Signal Station No. 29 was unable to work because of illness and the Carrier assigned Dunphy to perform it. No extra man was available. Parker contends that he was entitled to the work and claims a day's pay at time and one-half. Agent Dunphy claims eight hours at straight time rate for being suspended from work on his regularly assigned position and for eight hours at time and one-half for work performed outside of his regularly assigned hours. He also claims travel and waiting time.

There being no extra man available, the second trick operator was entitled to work his rest day in preference to Dunphy. The Carrier recognized this and paid Parker eight hours at straight time rate for the work lost when the work was improperly assigned to Dunphy. The payment made was the correct one. Parker's loss is the rate the regular occupant of the position would have received had he performed the work. The occupant of the relief position was Merchant. His rate of pay is, of course, the assigned rate of the position,—the straight time rate. This is the measure of Parker's loss. This amount Carrier has paid to Parker and he has, therefore, been fully compensated under the Agreement. Awards 4244, 4495, 4645, 4728.

Agent Dunphy was improperly assigned to the relief position at Signal Station No. 29 on the date of the claim. He was paid the straight time rate for working this position. There being no emergency, he was entitled to be paid the rate of the position filled, which he has received, and his actual necessary expenses as provided by Rule 13, current agreement. He is also entitled to eight hours pay at the pro rata rate of his regular assignment. This for the reason that he was improperly required to suspend work on his own assignment. There is no overtime involved for the reason that Dunphy only worked eight hours on that day.

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;

The 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 violated.

AWARD

Claim (a) sustained. Claim (b) sustained per Opinion. Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1950.