

Award No. 4957

Docket No. TE-4887

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company that:

(1) the carrier violated the provisions of the Telegraphers' Agreement when and because for services rendered by George Regan on Sunday, August 22, 1948, only three (3) hours at straight time rate was allowed, and

(2) consequently the carrier shall now pay said George Regan the difference between three (3) hours at straight time rate and three (3) hours at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of November 1, 1947, and by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement lists at Kingston, Pennsylvania, a ticket agent position, rate of pay \$291.43 for a 204 hour month. This means that any and all Sunday and Holiday service will be under the Call and/or Overtime rules of the agreement. This is a so-called 6-day position and Sunday and holiday service is governed by Article 8, Section 2 (a) of the Telegraphers' Agreement.

W. H. Evans by virtue of his seniority rating is the regular incumbent of the said position at Kingston. Beginning August 16, 1948 and forward through August 28, 1948, George Regan, working from the Scranton seniority district extra list and pursuant to Article 18 (a) of the Telegraphers' Agreement, was assigned to relieve Mr. Evans, who was on vacation.

The assignment at Kingston is 2:00 p.m. to 10:00 p.m. daily except Sundays and Holidays. On each of these latter days, the assignment requires regular "call" service of less than 3 hours to handle train No. 1705 at 6:30 p.m.

Claimant Regan worked the assignment as described and in the same manner as did Mr. Evans. But, for the Sunday "call" service August 22, 1948, Mr. Regan was paid only three hours at straight time rate whereas Mr. Evans regularly receives three hours at time and one-half rate for such service and would have been so paid on August 22 had he been working instead of on vacation.

6. Obviously, the Referee in Award 4322 was confused and exemplified a high degree of misunderstanding and a total disregard for facts when he bottomed his award on Rule 8 of the 1940 agreement, which rule had long since been the victim of rigor mortis, and a rule (Rule 5) which obviously had no application since it covered work of an entirely different nature, and
7. The Referee's interpretation of the words "an employe" is strained, unreal, fancied, false and dreamy.

CARRIER'S STATEMENT OF FACTS: On Sunday, August 22, 1948, Mr. Regan, an extra man, was called and compensated for three (3) hours at the straight time rate. Claim for time and one-half rate was declined.

I

POSITION OF CARRIER: There was no violation of the agreement.

It is not denied by the organization but admitted that the claimant is an extra employe.

Accordingly the claim is without merit.

In Award 4322 the same type of claim was before the Board. There, as here, compensation at penalty rate was claimed for extra employes working Sundays. The claim was denied by this Board. That award is controlling here. See also Awards 4303, 4304 and Interpretation No. 1 to Award 4303, copy of which is attached.

II

The claim should be denied.

"Penalty time is the exception, not the rule, and if a rule does not affirmatively and clearly provide that the employes in question be given such, then it is not in order."

Award 4322—3rd Division

(Exhibits not reproduced).

OPINION OF BOARD: W. H. Evans is the regular occupant of the ticket agent position at Kingston, Pennsylvania. His hours of assignment are from 2 P.M. to 10 P.M. daily except Sundays and holidays; and on Sundays and holidays the assignment requires "regular call" service of less than three hours. This is a six-day position. From August 16 through August 8, 1948 claimant relieved the regular occupant who was on vacation.

The undisputed facts are that the regular occupant would have received three hours at time and one-half for the "call" on Sunday, August 22, 1948, if he had not been on vacation. The claimant received three hours at only the straight time rate.

Although this case involves merely a claim for a "call", the same principle as expressed in Award 4774 is applicable. Under Article VIII, Section 2(a) and Article XVIII (b) the claim is entitled to receive the same compensation as the regular incumbent of the position would have received had he performed the work.

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 Agreement was violated.

AWARD

Claims 1 and 2 are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of July, 1950.