

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

(1) The Carrier violated the terms of the agreement in effect between the parties when it required L. Y. Winans to suspend work on her regular assignment in Hoisington, Kansas Relay office and required her to assume the duties of another position in that office on successive days, April 30, 1949, to and including May 25, 1949, excepting May 14th, on which date no service was performed by claimant.

(2) The Carrier shall now compensate the claimant for the difference in the amount of compensation paid and the amount of compensation due because of the violation on the following basis:

For each day so used, eight (8) hours at straight time rate of the regular assignment, and for eight (8) hours at time and one-half rate of the position worked outside the hours of the regular assignment.

EMPLOYEES' STATEMENT OF FACTS: Commencing April 30, 1949, Mrs. L. Y. Winans, regularly assigned telegrapher Hoisington, Kansas, relay office, assigned hours 8:00 A. M. to 4:00 P. M., daily except Sundays and holidays, was required to suspend work during regular hours on her own assignment to perform relief work on the late Night Chief Operator position with assigned hours 12:00 o'clock midnight to 8:00 A. M., until May 25, 1949, both dates inclusive, except May 14, during which period her regularly assigned position was not filled but was blanked each day.

Pursuant to Rule 10 (e) and Rule 10 (c), Claimant Winans filed claim for eight (8) hours' pay at pro rata rate covering her regularly assigned hours, and eight (8) hours at time and one-half rate covering the position on which she was thus required to perform relief work while her position was being blanked, on each day April 30, May 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 24, 25, 1949, which time claims were declined, and for which days she was paid pro rata rate of only the position worked. Claimant was paid time and one-half for service performed on the Late Night Chief Operator position on Sunday during the period of time involved here.

Under date of May 25, 1949, Superintendent Telegraph notified Manager Goding of the Hoisington relay office that Mrs. Winnans' regular position would be abolished effective June 1, 1949. Mrs. Winans (Claimant here)

patcher positions. We feel sure the Employees do not intend us to consider their position in this dispute to mean that the Carrier should have held the extra telegrapher on the job at Hoisington when there was work available for him as an extra dispatcher at Osawatomie. It was the withdrawal of this employe from the job at Hoisington that created the vacancy there—not the illness of a dispatcher at Osawatomie.

In his letter of October 18, 1949, Carrier's Exhibit "G", General Chairman Noll points out that the Carrier could have given notice to Mrs. Winans on April 29, 1949 of the abolishment of her position instead of waiting until May 25, 1949, and indicates that if such action had been taken there would have been no basis for these claims after five days from notice of abolishment. His statement is very true but the Carrier did in fact abolish the job April 30, 1949; no one worked it during the claim period. Is not Mr. Noll's statement evidence of the highly technical nature of the claims? For all practical purposes the actual situation was exactly the same as if the job had been actually abolished by notice, but merely because such notice was not served April 29, 1949 we are asked to pay for 21 days on one position on which no service whatever was performed by anyone and 25 half-days in the form of punitive pay on another job which was worked only during its regular hours of assignment.

It is the Carrier's position that whether or not the job was abolished, there was no violation of the Telegraphers' Agreement involved in the transfer of Mrs. Winans to the position of Late Night Chief April 30 to May 25, 1949 and there is no provision in the Agreement that would justify, require or permit the payments claimed.

With reference to the awards cited by the Employees the Carrier has the following to say:

Award 3602 covers a claim by a telegrapher for calls in instances where conductors were permitted to copy train orders. We do not see any connection with this dispute.

Awards 3609 covers a situation involving different conditions, different rules and the decision did not call for payments such as claimed in this dispute. In that case a transfer similar to ours was made but all three positions were filled—one of them by an employe not covered by the agreement. That agreement contained a rule reading exactly as our Rule 10 (e) but it also contained a rule that employes holding temporary or regular assignments will not be required to do relief work except in case of emergency unlike our Telegraphers' Agreement which contemplates transfers for relief service whether an emergency exists or not. The award, specifically holding that an emergency did exist, did not authorize payment such as claimed in our dispute notwithstanding the claim was made on the same basis as the claim with which we are dealing in this submission.

Award 4312 covered a Clerks' case in which the boundary of two seniority districts was crossed with work and decision was rendered on that basis, not on conditions such as prevailed in this dispute.

Award 4818 covered a Clerks' case that involved the classification of a newly established position and is in no wise parallel with the claims here before you.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned as a Telegrapher 8:00 A. M. to 4:00 P. M. daily, except Sunday and holidays, in the Relay Office at Hoisington, Kansas. On April 30, 1949 and following, Claimant was required to work the Late Night Chief position, 12:00 midnight to 8:00 A. M. It is the contention of the Claimant that she was required to suspend work during the regular hours of her assignment to absorb work which otherwise

would have been performed on an overtime basis. Rule 10(e) current Agreement states:

“Employees will not be required to suspend work during regular hours or to absorb overtime.”

Claimant owned the Telegrapher's position assigned 8:00 A. M. to 4:00 P. M. She had a right to work this position until such right was terminated, in accordance with the provisions of the controlling Agreement. This was not done. The position was blanked and Claimant was directed to work the Late Night Chief position. Claimant is entitled to be paid for the time lost on her regular assignment at the assigned pro rata rate. A further violation occurred when she was required to work outside of her regularly assigned hours, the penalty for which is ordinarily the time and one-half rate. Our late Awards hold that to allow both penalties concurrently is to allow a double penalty, and that the greater penalty alone should be allowed. Awards 4109, 5423. Consequently, we sustain the claim for eight hours at pro rata rate for each day Claimant was not permitted to work her regular assignment, and deny the balance of the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.