

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, 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:

(1) That the Carrier violated Rules 3, 7, 9, 14 and 21 of the Telegraphers' Agreement when on Saturday and Sunday, his assigned rest days, June 24 and 25, 1950, J. A. Daily, Extra Agent, was required by the Carrier to work 9 hours and 8 hours respectively, as Agent at Watsonville Junction, Calif., transferring station accounts, also 3 additional hours on Sunday, June 25, 1950 transferring station accounts at Spreckels, Calif., paying him at pro rata rate instead of overtime rate for service performed.

(2) When on Saturday and Sunday, his assigned rest days, June 24 and 25, 1950, H. W. Trembley, regular assigned Agent at Watsonville Junction, was required by the Carrier to work 9 and 11 hours respectively, transferring station accounts at Watsonville Junction and Spreckels, Calif., paying him at pro rata rate instead of overtime rate for service performed.

(3) That J. A. Daily shall be compensated at overtime rate of the Agent at Watsonville Junction for 17 hours and for 3 hours at overtime rate of Agent, Spreckels, less amount paid at pro rata rate and H. W. Tremblay be compensated for 20 hours at overtime rate of Agent at Watsonville Junction, less amount paid at pro rata rate, on the dates involved.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the Petitioner and the Carrier bearing an effective date of December 1, 1944, reprinted March 1, 1951 to include revisions brought about by the inauguration of the 40 hour work week. A copy of this agreement is on file with your Board.

Due to a former incumbent vacating the agency at Watsonville Junction, J. A. Daily, an Extra Agent, was assigned to fill the position until same was advertised and assigned permanently. Mr. Daily was assigned daily except Holidays and rest days, the assigned rest days of this position being Saturday and Sunday, assigned hours 8:00 A. M. to 5:00 P. M. with one hour off for meal.

Watsonville Junction agency was advertised for seniority choice. H. W. Tremblay who was regularly assigned as agent at Spreckels, made applica-

tions involved; although such rules of construction further establish the under those rules the claimants herein are entitled to the straight time rate of pay only for time actually consumed in checking in and out of the position of the position the organization has taken in prosecuting these claims. We respectfully direct the attention of Division members to the rule of construction which has been repeatedly applied by all Divisions of the National Railroad Adjustment Board and which requires a strict construction of provisions for punitive allowances. It has been held that claims for such allowances cannot be sustained in the absence of rules "clearly establishing the right".

IV

CONCLUSION

Carrier respectfully requests that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the organization and are made a part of the particular question in dispute. (Exhibits not reproduced.)

OPINION OF BOARD: Claimants here, J. A. Daily and H. W. Tremblay, seek pay at the overtime rate for certain work performed on June 24 and June 25, 1950. The straight time rate was paid.

The facts existent are without conflict. Immediately prior to the dates in question, Claimant Tremblay, who held the agent-telegrapher position in Spreckels, California, in the exercise of his seniority took a like position at Watsonville, Junction, California. Claimant Daily, an extra telegrapher, who had been filling this temporary vacancy, was reassigned to Spreckels to fill the position so vacated by Claimant Tremblay.

Both of these positions were five-day assignments, with Saturday and Sunday as rest days.

Respondent instructed these claimants to transfer their station accounts on June 24, 1950. The record is clear that each claimant spent nine (9) hours on Saturday, June 24 and eight (8) hours on Sunday, June 25 in effecting the transfer of station accounts at Watsonville Junction. Each claimant likewise spent three hours transferring the station accounts at Spreckels.

The Organization asserts that since this work was performed by each claimant on the assigned rest days of their respective positions at the special instance and request of the Respondent, computation at the overtime rather than the straight time rate is mandatory under Rule 7 (c), and that Rule 11 (a) is not applicable here. The Organization contended that the Respondent had never, prior to the adoption of the five-day week, required the transfer of station accounts on the rest day of a position, and that Rule 11 (a), while not applicable, was not in itself being properly interpreted and applied by the Respondent.

While admittedly the parties hereto have agreed Rule (7 (c)) that all work performed on the rest days of a position, by the occupant thereof, should be compensated for at the overtime rate, the parties have likewise included in the Agreement a rule (Rule 11 (a)) by which the rate of compensation is established for the performance of work identical to that which was here performed, that is, time consumed in checking in and out of a position.

A rule negotiated to deal specifically with certain situations must of necessity be considered as controlling. Rule 11 (a) is such a rule.

The Board is of the opinion, and so finds and holds, however, that the Respondent has not properly interpreted and applied Rule 11 (a). The

assignment at Watsonville Junction is clearly one position, while the Spreckels assignment is another and separate position. Each claimant spent and was compensated for three (3) hours for transferring accounts at Spreckels. Rule 11 (a) provides for a minimum of four (4) hours' pay for this service. Neither claimant was so paid. Each should have been, and to this extent the claim is valid.

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 disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of July, 1953.