

Award No. 6737
Docket No. TE-6609

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway; that

1. The Carrier violated the Agreement between the parties when, on January 24, 25 and 31, 1952 it required B. Hopkins, regularly assigned agent-telegrapher at Friend, Kansas, to suspend work on his position and perform service as Agent-Telegrapher at Shallow Water, Kansas, four (4) hours each day, January 24, 25 and 31, 1952; and
2. The Carrier shall pay claimant, B. Hopkins, the equivalent of four hours pay at the rate of his regularly assigned position at Friend, Kansas for each of the days mentioned in (1) above, in addition to that already paid to him for such days.

EMPLOYEES' STATEMENT OF FACTS: An Agreement, bearing effective date of June 1, 1951, between the parties to this dispute is in evidence.

Page 72 of said Agreement shows the following assignments:

Friend	Agent-Telegrapher.....	1.67
Shallow water	Agent-Telegrapher.....	1.73

B. Hopkins regularly assigned to the position of agent-telegrapher at Friend, Kansas, with assigned hours of 8:00 A. M. to 5:00 P. M. with one hour off for lunch, was on January 24, 25 and 31, 1952, required by Carrier to work from 8:00 A. M. to 12 noon on his position at Friend, leave his regular assignment unfinished, travel to Shallow Water, Kansas, a distance of 7.7 miles, and fill the agent-telegrapher position at the latter point from 1:00 P. M. to 5:00 P. M.

He was allowed necessary expense for the travel incurred and was allowed eight hours pay at the straight time rate of the Shallow Water position, which is the higher of the two.

The Organization filed claim in behalf of B. Hopkins for four hours additional pay on each of the three days he was suspended for four hours from

bearing upon the case. Under the rules and upon the record claimant was entitled to payment at straight time only for work performed on the second trick (Award 2444); and he was not entitled to a day's pay on account of his regular assignment which he did not work." (Emphasis added.)

Further confirmation of the Board's position with respect to such claims is reflected in Award 3132.

Awards 556 and 1302, cited by General Chairman Anderson in his letter of April 22, 1952 (Carrier's Exhibit "E"), are in no wise pertinent to the instant dispute. Both concerned circumstances entirely different from those herein involved, and neither related in any way to the use of regularly assigned employees to perform emergency service on positions other than their own.

CONCLUSION

Carrier contends that this claim is without support under the Telegraphers' Agreement and respectfully requests a denial thereof, for the following reasons:

1. Article X, Section 2-a, of the Telegraphers' Agreement was expressly designed to cover the use of regularly assigned employees for emergency relief service, under circumstances such as are here concerned, and explicitly stipulates compensation to be allowed therefor.
2. Agent-Telegrapher Hopkins was fully compensated under the provisions of Article X, Section 2-a, for service performed by him, January 24, 28 and 31, 1952.
3. Article III, Section 4, and Article II, Section 1, are not pertinent to this claim.

All that is herein contained has been both known and available to the Employes and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: During January, 1952, Claimant Hopkins was the regularly assigned agent-telegrapher at Friend, Kansas, with hours from 8:00 A. M. to 5:00 P. M., one hour off for lunch. For the same period one Baldwin held a similar position at Shallow Water which is 7.7 miles from Friend.

On January 24, 28 and 31, 1952, Baldwin was absent from his position on account of illness. This created a situation that required Baldwin's position to be filled on a part time basis to protect the service. There being no extra telegrapher available, the Carrier required Hopkins to leave his regular position at Friend after his lunch period, drive to Shallow Water and fill Baldwin's position for the afternoon, returning to Friend by 5:00 P. M., his regular quitting time. For all services rendered on the above dates Hopkins was compensated for eight hours each day at the pro-rata rate of the Shallow Water position, it being the higher rated of the two positions involved.

The Organization takes the position that payment at the Shallow Water rate for eight hours for each of the days on which Claimant worked at that point was proper under Article X, Section 2-a of the agreement; but that Claimant was also entitled to be paid for eight hours for each of said days at the pro rata rate of the Friend position by reasons of the requirements of Article III, Section 4, and Article XVII, Section 1.

The Carrier asserts that the Claimant was properly compensated for all services rendered on the days in question. It says that the Guarantee Rule

(Article XVII, Section 1) applies to the employe and not the position and that inasmuch as Claimant was paid for eight hours at a rate higher than that of his regular position for each eight hours worked, there was no violation of Article XVII.

Article X authorizes a regularly assigned employe to be taken off his assignment to perform relief work in cases of emergency. Such an employe will be paid not less than a minimum day of eight (8) hours for each day he is assigned to work on his assigned position, and payment for time worked on the emergency position will be at the higher rate of the two positions involved. It appears that Claimant was paid in accordance with Article X and if that was the only rule applicable to the situation there would be no basis for the claim. However, Section 4 of the Article III says that employes will not be required to suspend work during regular hours, and Section 1 of Article XVII provides:

"Regularly assigned employes will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on their rest days and the designated holidays."

It is our duty to harmonize Section 2-a of Article X with Section 4 of Article III and Section 1 of Article XVII in such a manner as to give full force and effect to all of said Sections in their application to the facts of this case, if that can be consistently done. Manifestly, none of these sections can be applied abstractly and without regard to the others. For example, if an employe may not be required to suspend work during regular hours, how may he be taken off his assignment to perform relief work in case of an emergency? The logical answer to the question, it seems to us, is that the circumstances under which the employe may be called upon to perform relief work in case of an emergency constitutes an exception to the general rule that he may not be required to suspend work. So construed, there is no conflict between Section 4 of Article III and Section 2-a of Article X.

Likewise, if an employe receives more than the regular rate for the total number of hours that he is entitled to work, it can hardly be said that the Guarantee Rule has been violated. We think that Article X is controlling and that the Claim is without merit.

The Organization makes the further point that Article X, Section 2-a was intended to be limited in its application to those situations where employes might be wholly diverted from their regular assignments, and not to instances where the diversion was only for a part of such a day, as we have here. We find no basis in the language of the applicable rules or in the facts of the case that would justify us in making such a distinction.

Treating Article X as a special rule, as we think it should be treated, it seems consistent to hold that it is to be regarded as an exception to the general rules in Articles III and VII. No inequity results in such an application. The Claimant lost no time, was paid at the higher rate applicable to the two positions on which he worked, and was reimbursed for his travel expense in accordance with the Agreement.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Carrier did not violate the Agreement.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1954.