

Award No. 6768

Docket No. TE-6620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company):

(1) That Carrier violated the terms of the Agreement between the parties; when on the 19th day of June, 1951, it required W. M. Ault to suspend work, on his regularly assigned position, (7:00 A. M. to 3:00 P. M.) as Telegrapher-clerk in "RN" office, Hearne, Texas, and required him to assume the work of another position in that office, on said date, with assigned hours of 3:00 P. M. to 11:00 P. M.

(2) That Carrier be required to compensate Telegrapher-clerk W. M. Ault at the straight time rate for 8 hours, on said date, when he was suspended from his regular assignment.

(3) That Carrier be required to compensate Telegrapher-clerk W. M. Ault for the difference between straight time rate and time and one-half rate for the 8 hours worked between 3:00 P. M. and 11:00 P. M. on said date.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an agreement between Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), hereinafter called Carrier, and The Order of Railroad Telegraphers, hereinafter called Employees or Telegraphers. The Agreement became effective on the 1st day of December, 1946, and has been amended as shown by copies on file with this Board. The entire agreement, as amended, is by reference included herein as though set out here in word for word. The contract is a collective bargaining agreement between Carrier and Telegraphers governing wages, hours and conditions of employment for employees of Carrier covered by the Agreement.

In anticipation of the Forty-Hour Week Agreement which became effective on the 1st day of September, 1949, Carrier and Telegraphers entered into the following Memorandum Agreement:

2nd trick for at least two days, whereas in diverting Ault, he was off his regular assigned hours only one day, and in position to work the next two days on his regular assignment.

10. Finally, the Carrier contends that, under the circumstances involved, the emergency was properly met, with no violation of the Hours of Service Law, and with no violation of the Telegraphers' Agreement. The claim is, therefore, without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Ault was a regularly assigned relief telegrapher-clerk. For Tuesday, June 19, 1952, his assignment was to work the first trick from 7:00 A.M. to 3:00 P.M. However, on said day the regularly assigned occupant of the second trick position was absent on account of sickness and, there being no competent extra telegrapher available, Ault was required to suspend work from his own position for that day and work the second trick from 3:00 to 11:00 P.M. instead.

The Claimant was paid for eight hours at the pro rata rate for the work performed on the second trick. He claims that he should have been paid for eight hours at the pro rata rate for having been suspended from his own position, plus for eight hours at the overtime rate for working the second trick. There is no issue before us other than the matter of the proper compensation due the Claimant.

The Organization relies on Rule 6, "Employees will not be required to suspend work during regular hours or to absorb overtime"; and Rule 7, "Regular employees 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"

Standing alone, Rules 6 and 7 would support the Organization's contention; but it must be pointed out that Rule 13 (A) of the effective Agreement also provides that, "Regularly assigned employees taken from their assigned positions to be used at derailments, washouts, or similar emergencies, **or to do relief work**, will receive the salary of their position, subject to Rule 7." (Emphasis supplied.)

The grammatical construction of the quoted part of Rule 13 (A) does not support the Organization's contention that it was necessary for the Carrier to establish the existence of an emergency comparable to a derailment or a washout to have justified it in requiring the Claimant to suspend from his regular assignment and work the second trick on the day in question. The clause, "or do relief work," in Rule 13 (A) follows the enumeration of incidents classified therein as constituting emergencies, and this indicates that the quoted clause stands on its own bottom and operates independently of derailments, washouts, or similar emergencies.

Consistent with a recent Award of this Board, we hold that Rules 6 and 7 are general in character and that Rule 13 (A) constitutes an exception thereto. Rule 13 (A), therefore, provides the formula for determining the compensation to which the Claimant was entitled. See Award 6737.

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 hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1954