

Award No. 8138  
Docket No. TE-7669

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Frank Elkouri, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

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

1. Carrier violated the Agreement when, beginning September 1, 1949, it required a combination of the work of the agent-telegrapher with the work of the telegrapher-clerk position at Center, Texas, on Saturday; and
2. Carrier further violated the Agreement when, beginning concurrently with the violation described in Item 1, it required a combination of the work of the position of telegrapher-clerk with the work of the position of agent-telegrapher at Center, Texas, on Mondays.
3. Carrier shall pay the senior idle extra telegrapher on the district involved an amount equivalent to eight (8) hours at the straight time rate for each Saturday, beginning September 3, 1949, when it required the telegrapher-clerk at Center, Texas, to perform the work, and act as rest day relief employee in filling the position of agent-telegrapher at that point. If there be no such idle extra telegrapher on any of the Saturdays involved, then the Carrier shall pay the regular occupant of the agent-telegrapher position, an amount equivalent to eight (8) hours at the time and one-half rate because he was not used to perform the work and fill his position on each Saturday, his rest day, beginning as aforesaid.
4. Carrier shall pay the senior idle extra telegrapher on the district involved, an amount equivalent to eight (8) hours at the straight time rate for each Monday, beginning September 5, 1949, when it required the agent-telegrapher at Center, Texas, to perform the work and act as rest day relief employee in filling the position of telegrapher-clerk at that point. If there be no such idle telegrapher on any of the Mondays involved, then the Carrier shall pay the regular occupant of the telegrapher-clerk position an amount the equivalent of eight (8) hours at the time and one-half rate because he was not used to perform the work and fill his position on each Monday, his rest day, beginning as aforesaid.

support under the Agreement rules, the Carrier further asserts that the Employees' claim for eight (8) hours at penalty time and one-half rates in behalf of (1) the agent-telegrapher on Saturdays and (2) the telegrapher-clerk on Mondays account not used on such days is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764 5929, 5967 and many others.

Also without prejudice to its position that the Employees' claim in the instant dispute is entirely without support under the Agreement rules and should be denied for the reasons previously expressed herein, the Carrier further asserts that the Employees' claim for eight (8) hours at the time and one-half rate in behalf of the agent-telegrapher at Center on Saturdays, beginning September 3, 1949, and for eight (8) hours at the time and one-half rate in behalf of the telegrapher-clerk at Center on Mondays, beginning September 5, 1949, is improper for the reason that the claim was first presented to the Carrier by the Local Chairman in letter dated January 9, 1950, which is quoted in the Carrier's Statement of Facts, and the retro-active penalties are therefore necessarily limited by the provisions of the last sentence of Article V(i) of the Telegraphers' Agreement, effective December 1, 1938 and similar rule appearing as Article V, Section 10 of the current Agreement, both of which read as follows:

"Grievances, other than appeals on time claims or discipline not presented within sixty (60) days from date alleged to have occurred, are barred from consideration. Time claims must be presented in writing to the Railway Company to be entitled to consideration, and any payment claimed will, if allowed, be restricted to a period commencing not earlier than thirty (30) days prior to date so presented."

The Carrier also fully explained in its Statement of Facts that, due to a substantial decrease in business, it was possible to close the station at Center each Saturday, in addition to Sunday, and assign both the agent-telegrapher and the telegrapher-clerk to work Monday through Friday each week with Saturday and Sunday rest days, effective July 8, 1950. In other words, commencing July 8, 1950, there were service, duties, or operations to be performed at Center only five days per week—Monday through Friday. Since the staggered work week assignments complained of were discontinued on that date, the time element involved in this dispute is automatically restricted to the period from December 10, 1949 to July 7, 1950, inclusive.

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In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case is a companion case to that involved in Award 8136. The Agent-Telegrapher and the Telegrapher-Clerk involved herein are both covered by the Telegrapher Agreement and hold common seniority in the same seniority district. For the reasons stated in the aforementioned Award, the Claim herein must be denied.

**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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.