

Award No. 10106
Docket No. TE-9039

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violated the Telegraphers' Agreement when it failed and refused to pay Agent-Telegrapher W. E. Conner at Ackerman, Mississippi, for a call on January 6, 9, 11, 13, 16, 20, 23, 25, 30, 1956.

2. Carrier shall compensate W. E. Conner two hours at the rate of time and one-half on each of the dates mentioned in paragraph 1 above.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose, the position of Agent-Telegrapher at Ackerman, Mississippi, was a monthly rated position, rate \$437.51, assigned hours 8:00 A. M. to 5:00 P. M. with a one hour meal period, assigned work week Monday through Saturday and assigned rest day Sunday. The comprehended monthly working hours 208 $\frac{2}{3}$, using 211 hours as the factor for applying wage rate changes and determining the overtime rate.

On the dates mentioned in the Statement of Claim, Claimant Conner, acting in accordance with instructions, went to the depot outside his regularly assigned hours to consummate delivery of certain cars arriving on the local freight train to the Illinois Central Railroad.

Claim was filed for these calls and was handled in the usual manner up to and including the highest officer of the Carrier designated to handle such matters and failing of adjustment we are now before your Board.

POSITION OF EMPLOYEES: It is the position of the employees that the provisions of the Call and Overtime rules apply to the Agent-Telegrapher position at Ackerman and the Claimant must be paid in accordance therewith.

Carrier reserves the right to make an answer to any further submission of the Petitioners.

(Exhibits not reproduced).

OPINION OF BOARD: The question to be resolved — as phrased by the Referee — is as follows:

Is W. E. Conner, the Claimant and a monthly rated Agent-Telegrapher at Ackerman, Mississippi, entitled to payment for extra Carrier required services occurring outside of his regular tour of duty?

On the days set forth in the Statement of Claim, supra, the Claimant met an arriving freight train and delivered waybills to the Illinois Central Railroad before midnight so that the Carrier would not be charged an extra day's rent for certain freight cars.

In the Agreement effective February 1, 1928 we find in paragraph (b) of Rule 3 — entitled "Basis of Pay" — the following provisions:

"Exclusive agents at Semmes, Newton, Union, Walnut Grove, Philadelphia, Ackerman, Dancey, Houston and Pontotoc, assistant agent at Union, and relief agents, will be paid a monthly rate to cover all services rendered."

"Exclusive Agents" — according to the uncontradicted definition given to the Referee — mean "agents who perform no telegraphic services whatsoever."

The record indicates that the following set up prevailed at Ackerman in February 1928:

"Agent	Monthly rate	\$190.00
Opr.-Clk.	Hourly rate	.57"

From the facts, supra, it is obvious that Article 3(b) of the 1928 Agreement referred solely to an exclusive agent's position at Ackerman. Article 3(b) is not in the June 1, 1953 Agreement.

On page 90 of the current Agreement we find the following:

"Station	Title	Trick	Rate Per Hour	Commission
Ackerman	A-T*	. . .	\$375.29 per mo.	WU "

* A-T means Agent-Telegrapher

From the facts, supra, it is abundantly clear that the February 1, 1928 Agreement pertains to the position of an exclusive agent at Ackerman whereas the June 1, 1953 Agreement pertains to the position of Agent-Telegrapher at Ackerman. The two positions are unquestionably different. Consequently, the pertinent provisions of Rule 17 of the current Agreement — cited by the Carrier to sustain its position — apply to the position of an "exclusive agent" at Ackerman but they most certainly do not apply to the present position of an agent-telegrapher at Ackerman.

It is our conviction that the Organization's position is fully supported by the present agreement's "Call" and "Overtime" Rules. Accordingly, the Board rules that the Claimant must be paid for each call specified in the Statement of Claim, supra, on the basis of two hours for each call at the rate of time and one-half.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.

DISSENT TO AWARD NO. 10106, DOCKET NO. TE-9039

Award No. 10106 is patently in error in holding that the pertinent provisions of Rule 17 of the current Agreement do not apply to the position of Agent-Telegrapher at Ackerman.

There was no dispute between the parties that the position of Agent-Telegrapher at Ackerman was, prior to September 1, 1949, a monthly rated position. On September 1, 1949, the monthly rate of pay of that position was adjusted and the occupant thereof assigned one regular rest day per week, all in accordance with the provisions of Article II, Section 2 (c) (3) of the Agreement of March 19, 1949, which became effective September 1, 1949.

The provisions of Article II, Section 2 (c) (3) of the Agreement of March 19, 1949, were incorporated into the current Agreement effective June 1, 1953, as Rule 17, Section 3, paragraph (b) 2, and the position of Agent-Telegrapher at Ackerman was continued as a monthly rated position. Rule 17, Section 3, paragraph (b) 2 reads in pertinent part:

"Effective September 1, 1949, employees paid weekly or **monthly rates** comprehending more than 48 hours per week or more than 208-2/3 hours per month, * * *.

"* * * Service by such employees on other than the assigned rest day shall be compensated for under the rules applicable to such positions prior to September 1, 1949." (Emphasis added.)

The rule is specific in applying to employees paid weekly or monthly rates. It is not restricted to so-called "exclusive" Agents and this Division cannot properly, through the guise of an interpretation, place any restriction on it.

The Award is erroneous and we dissent.

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ J. F. Mullen