Award No. 10559
Docket No. TE-8946

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Terminal, that:

1. Carrier violated agreement on October 11, 1955, when it failed and refused to compensate J. E. Hatmaker for 8 hours at time and one-half rate.

2. Carrier will be required to compensate J. E. Hatmaker for one hour at time and one-half rate, in addition to seven hours at time and one-half rate previously paid, for services rendered on October 11, 1955.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between the Management on behalf of The Northern Pacific Terminal Company of Oregon, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective on September 1, 1949 and has been amended. The Agreement, as amended, is on file with this Division and is by reference, included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute involves the interpretation of the provisions of the collective bargaining Agreement and is, under the provisions of the Railway Labor Act as amended, proper to be submitted to this Board for decision.

Mr. J. E. Hatmaker is the owner of a regular assigned position at Portland, Oregon, with assigned hours of 4:00 P. M. to Midnight. On the 11th day of October, 1955, due to the absence of the first shift telegrapher (assigned hours 8:00 A. M. to 4:00 P. M.), Mr. Hatmaker was called (about 8:30 A. M.) to work in lieu of the regular first shift telegrapher. Mr. Hatmaker was

by Telegrapher Janes being ill that morning, and for **none** of which the Carrier was in any way responsible; and that Award 7250 of this Division is controlling; therefore, the claim is completely without merit, and the Carrier respectfully requests that same be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In October 1955, Claimant J. E. Hatmaker was regularly assigned to a relief Telegrapher job in the "VC" office at Portland, Oregon. His work week was Sunday-Thursday, with Friday-Saturday rest days. On Tuesdays Hatmaker relieved the second shift Telegrapher (shift hours were 3:59 P. M. - 11:59 P. M.).

On Tuesday, October 11, 1955 O. A. Janes failed to report for duty (on account of illness) on the Chief Telegrapher's first shift position (shift hours were 7:59 A. M. - 3:59 P. M.). For an hour (7:59 - 8:59 A. M.) Third shift Telegrapher A. J. Weeden remained on duty filling Janes' place. At about 8:30 A. M. Weeden phoned Hatmaker and asked him to work the remainder of the shift. Hatmaker responded promptly and went on duty at 8:59 A. M. He worked in the Chief Telegrapher position until 3:59 P. M.

For the eight hours of the Chief Telegrapher position Weeden received one hour's pay at time and one-half, and Hatmaker received seven hours' pay at time and one-half.

Hatmaker did not work in his regular second shift relief assignment that day. Instead M. D. Nickelson, the regular incumbent, was brought in (it was his rest day) and paid time and one-half for eight hours.

The O.R.T. contends that Hatmaker should have been paid for eight hours in the Chief Telegrapher position and is now entitled to receive one hour's pay at time and one-half. The Carrier believes Hatmaker was correctly paid.

The parties' 1949 Agreement establishes a "basic day" of eight consecutive hours (Article 5, Section 4: ". . . eight consecutive hours, exclusive of the meal hour, shall constitute a day's work . . .") and provides for a 40 hour week "consisting of five days of eight hours each, with two consecutive days off in each seven" (Article 6, Section 1). In Article 6, Section 1(n) the parties agree that "All existing weekly and monthly guarantees shall be reduced to five days per week," and that "nothing in this agreement shall be construed to create a guarantee of any number of hours or days of work where none now exists."

In 1953 the parties entered into a Memorandum of Agreement covering the use of regular employes to fill temporary vacancies, assignment of regular employes to relief work, and related matters. Rule 2 of the 1953 Agreement applies to the case at hand; it states:

> "A regularly assigned employe used for relief work will receive the higher rate of the two positions, his own or the one being filled, at pro rata rate for time worked within the hours of his assigned position, and time and one-half for time worked outside the hours of his assigned position, except when such service outside assigned

hours results from the application of Rule 1 hereof, in which case the provisions of this Rule 2 will not apply.

"A regularly assigned employe used for relief purposes as set forth in this rule will have no claim for guarantee of regular assignment in addition to compensation allowed for position being filled, except that his earnings shall not be less than he would have earned on his regular assignment."

This, clearly, is a special rule designed to cover situations such as the one which arose on October 11. If there is any conflict between this rule and the 1949 basic Agreement (and we make no such finding), the later and more specific rule would have to take precedence.

Hatmaker was, in the words of Rule 2, "a regularly assigned employe used for relief work." To what compensation was he entitled on October 11? Does Rule 2 guarantee him eight hours' pay for that day, as the O.R.T. contends?

The only "guarantee" in this Rule is contained in Paragraph 2 which assures the affected employe that "his earnings shall not be less than he would have earned on his regular assignment." Hatmaker would have earned eight hours' pay at straight-time rates had he remained on his regular second shift assignment. Instead he received seven hours' pay at time and one-half, which produced slightly over $5.00 more. Thus his actual earnings were not less than they would have been on his regular assignment.

The Petitioner argues that the main clause of Paragraph 2 was designed solely to eliminate the requirement that Management pay for the regular assignment in addition to relief service work, and that "position filled" refers to the normal contract procedure of filling a position for eight hours. This, however, appears to be a strained interpretation.

"Compensation allowed for position being filled", in our judgment, refers to Paragraph 1 of the Rule which specifies that time and one-half be paid "for time worked outside the hours of his assigned position." This wording is sufficiently clear to justify (1) Management's payment to Hatmaker of time and one-half for the seven hours he worked, and (2) its denial of pay for the hour he did not work. Had the parties intended some other concept to be applied in determining payments under Rule 2 they would have used some phrase other than "for time worked", in our opinion.

Under these circumstances, and since Hatmaker received his "guarantee" under Rule 2, this claim will 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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.