

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. Carrier violated the Agreement when on November 2, 1957 it required W. C. Payne, assistant agent, Plattsburg, New York, to commence work at a different time on Saturdays than on other five days of the work week.

2. Carrier shall now compensate W. C. Payne, two hours at time and one-half rate between the hours of 1:00 P. M. and 3:00 P. M. on Saturday, November 2, 1957 and each Saturday thereafter such service is required to be and is performed by Mr. Payne.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective April 1, 1957, and is by reference incorporated in this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes, and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. The Claimant, W. C. Payne, owns the assignment classified as Assistant Agent, Plattsburg, New York.

2. Prior to October 21, 1957, the assigned hours of service of the position of Assistant Agent, Plattsburg, New York, were 9:00 A. M. to 5:00 P. M., Monday through Friday, and 9:00 A. M. to 1:00 P. M. on Saturday. There were no assigned hours for Sunday.

as the starting time on Saturday is two hours later than the starting time on the other days of the week, the starting time rule has been violated. This was their basic contention in Case 14.57 ORT in which claim was made that Assistant Agent at Plattsburg be paid two hours at pro rata rate for each Saturday that he did not report until 11:00 A. M.

In connection with Case 14.57 ORT, it is interesting to note that the original claim was amended while the case was under discussion on the property, and the request for two hours' pay at punitive rate for service on Saturdays between 1:00 P. M. and 3:00 P. M. was dropped. As previously stated, after pursuing this case through all stages of appeal on the property, the organization finally allowed it to lapse by failing to submit it to your Board, as provided by the Agreement rules.

Now comes the present case, in which no specific claim is made for service not performed between 9:00 A. M. and 11:00 A. M. on Saturdays, but is made for 2 hours' pay at time and one-half rate for service which has already been paid for in the monthly rate. In effect, the claim is for two and one-half times the straight time rate for the two hours' service performed between 1:00 P. M. and 3:00 P. M. Article 36 A 3 provides that the monthly rate of the position of Assistant Agent at Plattsburg comprehends service of "8 hours per day, 5 days per week, plus 4 hours' service on Saturday." This rule does not stipulate that any of the service performed was to be compensated for at punitive rates, but the organization is trying to obtain, for this 4 hours of service on Saturday, payment equivalent to straight time pay for 7 hours.

It is the position of the carrier that the claim must be denied based on the agreed-to monthly rate of pay and the agreed-to work week which comprehended the 4 hours of service on Saturday.

OPINION OF BOARD: The Claimant was Assistant Agent, Plattsburg, New York. The assigned hours of service of the position were 9:00 A. M. to 5:00 P. M., Monday through Friday, and 9:00 A. M. to 1:00 P. M. on Saturday. On October 21, 1957, the hours of service of the position of Assistant Agent were changed unilaterally on Saturday to be 11:00 A. M. to 3:00 P. M., rather than 9:00 A. M. to 1:00 P. M. The claim presented is for two hours at time and one-half rate between 1:00 P. M. and 3:00 P. M. on Saturday.

The Claimant contended that Rule 16 A of the Agreement:

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours notice to the employees affected."

The above rule applies and the starting time on this position must be the same every day of the week, including Saturday. The position held was a regular assignment. From Monday to Friday the Claimant had a regular starting time, 9:00 A. M. Thus, he should have a starting time of 9:00 A. M. on Saturday, according to Article 16 A of the Agreement.

The Carrier contended that Article No. 36, Section A.3, comprehends 8 hours of service per day, 5 days per week, with 4 hours on Saturday. Furthermore, the hours on Saturday do not provide for a specific starting time for either the daily or Saturday assignment. Thus, any assigned hours are appropriate.

Article No. 36, Section A.3, provides:

“The monthly rate of positions identified in the wage rate schedule by three asterisks (***) comprehends service of 8 hours per day, 5 days per week, plus 4 hours’ service on Saturday.”

It appears from the record that the Agreement of April 1, 1957 provided that this position would be paid an agreed-to monthly rate of pay, \$462.63 per month. Article No. 38.

We concur with the position of the Organization that the foregoing Article 16 A of the Agreement means that a regular assignment shall have a uniform starting time on each day of the week. If, as the Carrier contends, that Article 36 A.3 doesn’t provide specific starting times for either the daily or Saturday assignments, it also doesn’t provide for irregular starting times. Thus, we are to examine other Articles of the Agreement to determine what has been established on this subject. Hence, Article 16 A provides the rule applicable, and we conclude that the Saturday assignment was not in accord with Article 16 A.

The Claimant also seeks two hours at the time and one-half rate for work performed between the hours of 1:00 P.M. and 3:00 P.M. on Saturday, November 2, 1957, and each Saturday thereafter that such service is required to be performed. Article No. 33, Section 2.A, 2.C. provides for overtime at the rate of time and one-half. We are thus of the opinion that this means the Claimant is entitled to that rate less the regular pro rata rate that has been paid on the monthly basis. This compensates the Claimant one hour for each two hours worked, rather than three hours if the monthly rate paid is not deducted. We are also of the opinion that this is in keeping with Article No. 33, Sections 2.A, 2.C., payment for overtime work.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

1. That this Division has jurisdiction.
2. That the Agreement, Article 16 A specifically, has been violated.
3. That the Claimant is entitled to compensation at the rate of time and one-half for the hours worked on Saturdays from 1:00 P. M. to 3:00 P. M.
4. Credit shall be given to the Carrier for payments made on the regular monthly basis for this work in determining compensation due.

AWARD

Claim sustained in accordance with Opinion and the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.