

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate Operator J. F. O'Neill, regularly assigned occupant of the third trick seven-day position at WJ Tower, Ridgewood, New Jersey; hours of 10 P. M. to 6 A. M., rest days Mondays and Tuesdays, for services performed at WC Tower, Waldwick, New Jersey from 9:15 P. M. on Tuesday, September 13, to 12:15 A. M., on Wednesday, September 14, 1960, a rest day of his position.

2. Carrier shall now compensate Claimant O'Neill for eight hours at time and one-half in accordance with the provision of Rule 10 (L)—II-A(1), in lieu of the three hour punitive payment made under Rule 9.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective March 1, 1957 as amended and supplemented, is available to your Board and by this reference is made a part hereof as though set out herein word for word.

"WC" Waldick Tower, and "WJ" Ridgewood Junction, New Jersey, are located a short distance apart on the New York Division of the railroad (former Erie Railroad). Each of the offices are in the tower at the station named.

There are two Telegrapher-leverman positions at "WC" Waldwick Tower. The first shift has assigned hours of 5:00 A. M. to 1:00 P. M. and the second shift 1:00 P. M. to 9:00 P. M. Both are 5-day positions with rest days Saturday and Sunday. The office is closed on the rest days of the positions and between the hours of 9:00 P. M. and 5:00 A. M., daily.

IV. CONCLUSION

Carrier submits that the foregoing record clearly establishes this claim to be without merit. Based upon the facts and authorities cited the claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Operator J. F. O'Neill, Claimant herein, was the regularly assigned occupant of a third trick seven-day position at "WJ" Tower, Ridgewood, New Jersey; hours of 10:00 P. M. to 6:00 A. M.; rest days Mondays and Tuesdays.

On Tuesday, September 13, 1960 — a rest day of Claimant's position — Claimant was called to perform service at "WC" Waldrick Tower. He worked from 9:15 P. M. to 12:15 A. M., Wednesday, September 14, 1960. Carrier paid him for a call. The Claim is that he should have been paid as provided in Rule 10(1)II A(1) — Service on Rest Days — which reads:

"II. Employees required to perform services on their assigned rest days within the hours of their regular weekday assignments shall be paid on the following basis:

A(1) Employees occupying positions requiring a Sunday assignment of the regular weekday hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required service is on their regular positions or on other work."

From 10:00 P. M. on September 13 to 12:15 P. M., September 14, 1960, Claimant, who occupied a position requiring a Sunday assignment, performed services on his assigned rest days within the hours of his regular weekday assignment. The specific unambiguous language of the Rule quoted, *supra*, mandates, that for such service, he was contractually entitled to be paid at the rate of time and one-half with a minimum of eight hours. Accord, Award Nos. 9485 and 13043. Cf. Award No. 13678.

The Claim as processed on the property is confined to the difference in the pay received for a call and time and one-half for a minimum of eight hours. No claim is raised and we, therefore, are not concerned with the contractual rate of pay for the period from 9:15 P. M. to 10:00 P. M. on September 13.

We will sustain the Claim and award that Carrier pay Claimant eight hours' pay at time and one-half less the amount he received for services performed in the period from 9:15 P. M., September 13 to 12:15 A. M., September 14, 1960.

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 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 violated the Agreement.

AWARD

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1965.