

Award No. 13862

Docket No. TE-13051

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad, that:

1. Carrier violated the terms of the prevailing Agreement, when on July 2, 9 and 16, 1960, it required Mr. H. G. Orr, regularly assigned Agent, Kingston, R. I., to perform work on an overtime basis and improperly compensated him.

2. Carrier further violated the terms of the Agreement when, on July 31, 1960, it required Mr. A. J. Zerlanger, regularly assigned relief Agent, Kingston, R. I., to perform work on an overtime basis and improperly compensated him.

3. Mr. H. G. Orr and Mr. A. J. Zerlanger shall now be paid the difference between that which they were paid and the amount to which entitled, time and one-half at the rate of the position of Agent, Kingston, for July 2, 9 and 16 and 31, 1960.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. G. Orr is the regular assigned Agent-Operator at Kingston, Rhode Island. He has an assigned work week of Monday through Sunday with Saturday and Sunday as assigned rest days. The position of Agent-Telegrapher on Saturday and Sunday is covered by Relief Position No. 36 which is owned by Mr. A. J. Zerlanger.

At Kingston, Rhode Island, Mr. Howard M. Carpenter is a regular assigned Clerk, a position not under the Telegraphers' Agreement. On July 2, 9, 16 and 31, 1960, Mr. Carpenter was permitted to be absent from his position due to the death of his son and other business which was urgent. July 2, 9, 16 were Saturdays, and July 31 was a Sunday. The Carrier claimed on each of the dates above-stated in the claim that it had no available Clerk under the Clerks' Agreement to fill the position and required Mr. Orr to work the Clerk

The agreement between this Carrier and The Order of Railroad Telegraphers provides no basis for the claim presented.

We respectfully request that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute, Claimants are rostered and regularly assigned telegraphers who were used to cover a position of ticket clerk at Kingston, Rhode Island on an overtime basis. The occupant of a clerical position as well as other clerical employees were unavailable to cover the position of ticket clerk.

In the case of Claimant Orr, on July 2, 9, and 16, 1960, the service was performed on an assigned rest day following completion of forty hours of work on his own Agent-Operator assignment.

In the case of Claimant Zerlanger, July 31, 1960, the service was performed immediately following and continuous with his regular eight-hour assignment as Agent-Telegrapher.

The Carrier paid for each date, eight hours, at the time of one and one-half rate, assigned to the clerks' position, although Carrier now contends Claimants should have only been compensated at the Clerks' pro rata rate.

The Organization contends Claimants are entitled to time and one-half at the Agent's rate for such service. Rules of the Telegraphers' Agreement relied upon by the Petitioner, as justifying payment of the penalty-rate, are Article 6 — Basic Day — Overtime, which provides for payment of time and one-half for work in excess of eight hours; Article 6-A, which provides for payment of "Call" service not continuous with regular work period; Article 29, which provides for payment to employees taken from their own assignments to perform emergency service. These rules are set forth in the Employees' submission and will not be quoted in their entirety.

Carrier refers to Article 1 — Scope of the Telegraphers' Agreement, wherein, Carrier contends that this rule does not govern the compensation of employees on the position of ticket clerk, as said position is one subject to the Agreement between Carrier and the Brotherhood of Railway Clerks. This being the case, rules cited by the Employees are subject to limitation set forth in the Scope Rule and Claimants were only entitled to be compensated at the clerical rate. We disagree.

We are of the opinion, from the facts set forth in the record, that both Claimants were employees under the Telegraphers' Agreement and their claim shall be paid as set forth in the Employees' Ex-Parte submission.

Claimant Orr, when required to work at other than his regular assignment, shall be paid at the higher rate of the two positions in accordance with Article 29. It reads in part:

"When required to work temporarily at other than their regular positions, employees shall be paid at the higher rate of the two positions. . . ."

Article 6 and 6-A and the "Call" provision of Article 7, provide the basis for Claimant Orr's compensation at the overtime rate of time and one-half for the work performed on his rest days.

Claimant Zerlanger, who doubled over on his regularly assigned day, will receive compensation in accordance with Article 6(c) which reads:

"For continuous working service after regular working hours employees will be paid time and one-half on the actual minute basis."

Carrier argues that Claimants had the option and elected to work as spare clerks outside the scope of the Telegraphers' Agreement. We cannot, from the record, find evidence to support this assertion. No place do we find that the Claimant's negotiated, bargained, elected, or volunteered for the clerks' assignments, knowing that their rate of pay would be that under the clerks' agreement. Both Claimants claimed compensation at his own rate under the Telegraphers' Agreement. That contract creates the right to compensation and the rate of compensation. (See Award 13679.)

Carrier's argument is basic to collective bargaining agreements. Employment rights of employees are by agreement segregated and distributed into crafts and one has no rights under an Agreement to which he is not a party except as they may be adopted by the provisions of his own agreement. The awards cited by Carrier in support of this argument are distinguishable in that the awards presented dealt with employees having acquired seniority status or rights under two agreements and their status or rights were determined by applying the appropriate provisions of both contracts to arrive at the rate of compensation. Here, Claimants were directed to perform the lower rated work of the clerks' position. They acquired no seniority status or rights under the Clerks' Agreement, therefore Claimants were entitled to compensation for such work at the higher rate under their own Telegraphers' Agreement.

Awards 4454, 3489, 9106 further support our findings in the instant dispute.

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 Agreement was violated.

AWARD

Claim sustained as to both Claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1965.