

Award No. 14255
Docket No. TE-11375

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

1. The Carrier violates the parties' Agreement when commencing Saturday, June 7 and Sunday, June 8, 1958, it failed and refused to call the regular assigned occupant of the third shift telegrapher's position in Trinidad Yard Office, Trinidad, Colorado, to perform the work arising on his position on the unassigned rest days thereof, work which is assigned to and performed by him during his assigned work week Monday through Friday.

2. The Carrier shall, because of the violation set out above, compensate Telegrapher J. C. Dunmire, the regular assigned occupant of the third shift telegrapher's position at Trinidad Yard Office a day's pay at the time and one half rate for each Saturday and Sunday commencing June 7 and 8 respectively, 1958, except between June 16-June 27, when such compensation would accrue to D. D. Hannah, who was performing relief service on said position, and so long thereafter as the Carrier continues to violate the Agreement in the manner set forth in Item 1 of this claim.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective October 1, 1948, including changes and agreed-to interpretations as of the re-issue date, January 1, 1955, and as amended, including rates of pay effective December 3, 1954.

At Page 37 of said Agreement, Rule 38 — Rates of Pay, are listed the positions at Trinidad Yard Office, Trinidad, Colorado on the effective date of said Agreement. The listing reads:

"Location	Classification	Rate Per Hour
Trinidad	T	\$1.935
(Yard Office)	T	1.935"

Sunday, July 6, second trick operator worked one hour overtime, 9:00 P. M. to 10:00 P. M., continuous with assignment, to handle train orders and communications of record.

Saturday, July 12, second trick operator worked three hours and thirty minutes overtime, 9:00 P. M. to 12:30 A. M. Sunday, July 13, to handle communications of record and was called and worked 1:01 A. M. to 2:01 A. M., Sunday, July 13, to make Clearance Form "A" and deliver train orders to freight train No. 72.

Sunday, July 20, second trick operator was called and worked 1:00 A. M. to 1:30 A. M. to make Clearance Form "A" and deliver train orders to freight train No. 72.

Sunday, July 20, second trick operator worked one hour overtime, 9:00 P. M. to 10:00 P. M., continuous with assignment, to handle train orders and communications of record.

Saturday, July 26, second trick operator worked thirty minutes overtime, 9:00 P. M. to 9:30 P. M., to make Clearance Form "A" and deliver train orders to freight train No. 72.

Sunday, July 27, second trick operator worked two hours overtime, 9:00 P. M. to 11:00 P. M., to handle train orders and communications of record.

Assistant Vice President R. D. Wolfe replied under date of October 17, 1958, to General Chairman Epstein's appeal and therein informed the General Chairman that under the mandatory time limit provisions of Article IV of Appendix 3, of the August 21, 1954, Agreement, the claim presented seventy-four days after the occurrence in behalf of extra Telegrapher D. D. Hannah was barred, therefore, was not being recognized nor further dealt with as part of the instant issue.

The General Chairman was also informed therein that the claimant, J. C. Dunmire, was assigned as Agent at Wheatland, Wyoming, June 10 to 14, 1958, and was absent from duty on paid vacation June 16 to 27, 1958. He was also clearly informed that the copying and handling of train orders and other communication work, or clearing of trains at Trinidad, is, without deviation, performed by employees covered by the Telegraphers' Agreement, both on the rest days of claimant Dunmire as well as on the days of his work week. He was also distinctly apprised of the fact that the service requirements at Trinidad yard-office did not necessitate a regularly assigned third trick Telegrapher on Saturday and Sunday and that there was no Telegrapher work performed on these two days of the week by other than Telegraphers. When it became necessary on Saturday or Sunday during the third trick period to clear a train or copy a train order, then the available and eligible Telegrapher was used and properly compensated therefor under pertinent provisions of the Telegraphers' Agreement.

OPINION OF BOARD: It is alleged by Union that employees not covered by Agreement are performing covered work on rest days of the third shift position at Trinidad, Colorado. The record, however, does not contain any probative evidence to support the claim. This part of the claim will be denied for failure of proof.

It is uncontroverted, however, that on July 6, 13, 20, 26 and 27, 1958, the second shift telegrapher, with hours 1:00 P. M. to 9:00 P. M., was held over on an overtime basis or was called to perform service within the regular weekday assigned hours of the third shift position. Claimant J. C. Dunmire, regularly assigned to third shift position, 9:00 P. M. to 5:00 A. M., Monday through Friday, was observing rest days, on the foregoing dates. Our Award 13618, involving these parties and the same rules, held that the regular incumbent was entitled to be called to perform the work, under similar circumstances. This award is controlling here.

Claimant J. C. Dunmire should be paid, as provided in Rule 11 (1), for July 6, 13, 20, 26 and 27, 1958.

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 claims are disposed of in accordance with Opinion.

AWARD

Claimant J. C. Dunmire shall be paid as provided in Opinion. In all other respects the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.