Award No. 14289
Docket No. TE-14090

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated the Agreement between the parties when it required the regularly assigned Agent-Operator at Baxter, Tennessee, C. W. Tarpley, to work the position of Agent at Algood, Tennessee from November 2 through December 23, 1961, and failed and refused to compensate him at the highest rate of the two positions.

2. Carrier shall compensate C. W. Tarpley the difference between the amount he was paid and the amount he should have been paid for his services on the position at Algood from November 2 through December 23, 1961 ($139.19).

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1924, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant C. W. Tarpley is regularly assigned to the position of Agent at Baxter, Tennessee. Due to illness of the Agent-Operator at Algood, Tennessee, Mr. Tarpley was required to vacate his regular assignment at Baxter and work the position at Algood during the period November 2 through December 23, 1961.

The rate of pay at Baxter, at time of claim, was $2.398 per hour, with an assignment of Monday through Friday, except holidays.

At time of claim, the rate of pay of the Agent-Operator position at Algood was $495.98 per month, based on an assignment of Monday through Saturday, including holidays. The rate of $495.98, divided by 211 to compute the hourly factor, results in an hourly rate of slightly over $2.35.

8. Due to the mathematical error referred to in Note next above, the total amount of $139.19 claimed as stated by Employes in Part 2 of their Statement of Claim should be $110.41, but computed by Carrier as $110.46.

9. It was the conclusion of Carrier that claimant Tarpley had already been properly and fully compensated for the service performed by him during the period referred to and that no additional compensation was due; consequently, claim was declined.

10. The applicable agreement is that between Carrier and its Employes represented by The Order of Railroad Telegraphers, effective May 1, 1924, as amended.

11. Rule 14, relied upon by both Employes and Carrier, and which has undergone no change since May 1, 1924, reads as follows:

"REGULARLY ASSIGNED MEN DOING EXTRA WORK.

"Rule No. 14: (a) When a regularly assigned employe is temporarily transferred to a position paying a lower rate of pay than his regular assignment, he will be paid at the schedule rate of his regular wages; when transferred temporarily to a position paying a higher rate of pay, he will be paid at the rate of wages applying to such position; when a regularly assigned employe is transferred from his regular position to another position to work extra, he will be reimbursed for any necessary additional expense incurred on account of the change, and will be paid at pro rata for any additional time required in traveling to and from temporary assignment. Employes so transferred will suffer no loss of time in making the transfer.

"(b) Employes transferred, will be furnished free transportation for themselves, dependent members of their families and effects and, except in the exercise of seniority for vacancies or new positions, will be paid at regular schedule rates for time lost, rates of pay to be based on positions from which transfers are made. No transfers will be made on Sundays and on the holidays specified in Rule No. 8."

12. Correspondence in this case is reproduced and attached hereto designated Carrier's Exhibits Nos. 1 to 9, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned to the position of Agent at Baxter, Tennessee. That position at Baxter is a five-day assignment from Monday to Friday at a scheduled rate of pay of $2.398 per hour; and contemplates time and one-half for services performed on Saturdays and holidays.

Because of the illness of the Agent at Algood, Tennessee, Claimant was required by Carrier to work the position at Algood from November 2 through December 23, 1961.

The position at Algood is a six-day assignment from Monday through Saturday at a scheduled rate of $495.98 per month, including holidays.

During the period worked, Claimant was paid at the Algood rate of pay, and contends that had he been compensated at the Baxter rate he would have received more money. Claimant asserts: 1) Baxter was a higher rated position, 2) the Baxter position contemplated time and one-half for Saturdays and holidays, and 3) he would have received holiday pay at Baxter.

Thus, Claimant argues, if he is required to work at Algood he should be compensated at the hourly Baxter rate not at the monthly Algood rate.

Carrier denies the validity of Claimant's position and submits that he was properly compensated under the terms of Rule 14 of the Agreement. Carrier contends that the Algood monthly rate is higher ($495.98) than the average Baxter monthly rate ($417.25), and therefore, under Rule 14, Claimant was paid the proper and applicable rate.

The pertinent language of Rule 14 of the Agreement states:

> "(a) When a regularly assigned employe is temporarily transferred to a position **paying a lower rate of pay than his regular assignment, he will be paid at the schedule rate of his regular wages;** when transferred temporarily to a position **paying a higher rate of pay,** he will be **paid at the rate of wages applying to such position;** . . . (Emphasis Added).

By its nature and scope, it can be seen that Rule 14 (a) was intended to make equitable adjustments for regularly assigned employes temporarily transferred. This is particularly so when the transfers are made at the instance of and for the convenience of the Carrier. It was not intended, nor can it be construed, to enhance the Employe or give advantage to the Carrier.

The issue presented in this claim, in essence, is what rate of pay should be applied in determining proper compensation for the Claimant during the period worked at Baxter.

Claimant contends that the hourly rate of his regular position should be applied and compared with a pro-rated hourly rate of the monthly rated temporary position.

Carrier contends that the monthly rate of the temporary position must be applied and compared with the average monthly compensation of the Claimants' hourly rated regularly assigned position.

We hold that the Carrier's method of computing "rate of pay" was erroneous. The basis for Carrier's computation was its Timekeeper's determination that the Algood rate was higher than the average Baxter rate **on a monthly comparison,** i.e. the Algood monthly rate was higher than the Baxter rate if the Baxter rate had been computed monthly. Such a method of computation is not contemplated by the Rule.

The rule, considered in proper context, requires the employe's "**schedule** rate of his regular wages" shall be the governing denominator by which comparative wages are determined, whether higher or lower.

Since, as we hold, the employe's "schedule rate of pay" (hourly rate) is the denominator, and not the "rate of wages" (monthly) of the temporary position, we examine the record to find a formula for computing an hourly rate to the monthly rated position, and then determine which is higher.

The Carrier indicates that since May 1, 1954, the hourly factor of 207 2/3 was the number of hours comprehended in the monthly rate, and wage adjustments for the Algood position have since been made on that basis. Accepting this divisor (which is Carrier's) rather than Petitioner's divisor of 211, we find that the hourly rate of pay at Algood is $2.388 — lower than the hourly rate at Baxter which is $2.398.

We conclude, therefore, that Claimant is entitled to be compensated at the Baxter rate for the number of hours **actually worked** at Algood.

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 violated.

AWARD

Claim sustained consistent with the Opinion set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.

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