



Award No. 14308
Docket No. TE-13815

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

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

Claim No. 1

1. Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate J. C. Beville, regular assigned Agent-Operator, Milledgeville, Ga., for service performed at Tennille, Ga., between the hours of 2:30 A. M. and 8:00 A. M. as hereinafter set forth.

2. Carrier shall now compensate J. C. Beville the difference between the penalty hourly rate for Tennille (\$3.699) and the penalty hourly rate for Milledgeville (4.032) and in addition an expense allowance of \$3.00 per day for each date on which he was used off his regular assignment as shown by the following:

Date	Time	Hours Worked
Oct. 6, 1961	2:30 AM to 6:00 AM	3 ½
Oct. 7, 1961	2:30 AM to 5:15 AM	2 ¾
Oct. 8, 1961	2:30 AM to 6:45 AM	4 ¼
Oct. 11, 1961	2:30 AM to 7:00 AM	4 ½
Oct. 12, 1961	2:30 AM to 6:00 AM	3 ½
Oct. 14, 1961	2:30 AM to 6:00 AM	3 ½
Oct. 18, 1961	2:30 AM to 4:00 AM	*2
Oct. 19, 1961	2:30 AM to 6:00 AM	3 ½
Oct. 20, 1961	2:30 AM to 4:00 AM	*2
Oct. 21, 1961	2:30 AM to 4:00 AM	*2
Oct. 27, 1961	2:30 AM to 4:15 AM	*2
Oct. 31, 1961	2:30 AM to 4:45 AM	2 ¼

Total hours claimed	35.75 at \$4.032	\$144.14
Total hours paid	35.75 at \$3.699	132.24
Difference Due		11.90
Expense allowance 12 days @ \$3.00 per day		36.00
	Total Due	\$ 47.90
* Minimum		

Claim No. 2

1. Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate J. C. Beville, regular assigned Agent-Operator, Milledgeville, Ga., for service performed at Tennille, Ga., between the hours of 2:30 A. M. and 8:00 A. M. as hereinafter set forth.

2. Carrier shall now compensate J. C. Beville the difference between the penalty hourly rate for Tennille (\$3.699) and the penalty hourly rate for Milledgeville (\$4.032) and in addition an expense allowance of \$3.00 per day for each date on which he was used off his regular assignment as shown by the following:

Date	Time	Hrs. Wked.
Nov. 2, 1961	5:15 AM to 5:45 AM	*2
Nov. 30, 1961	2:30 AM to 3:30 AM	*2
Dec. 6, 1961	2:30 AM to 3:30 AM	*2
Dec. 22, 1961	3:30 AM to 4:00 AM	*2
Dec. 29, 1961	2:30 AM to 3:55 AM	*2
Total hours claimed	10 at \$4.032	\$40.32
Total hours paid	10 at \$3.699	36.00
Difference Due		3.32
Expense allowance 5 days @ \$3.00 per day		15.00
	Total Due	\$18.32
*Minimum		

Claim No. 3

1. Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate J. C. Beville, regular assigned Agent-Operator, Milledgeville, Ga., for service performed at Tennille, Ga., between the hours of 1:00 A. M. to 9:00 A. M. as hereinafter set forth.

2. Carrier shall now compensate J. C. Beville the difference between the penalty hourly rate for Tennille (\$3.699) and the penalty hourly rate for Milledgeville (\$4.032) and in addition an expense allowance of \$3.00 per day for each date on which he was used off his regular assignment as shown by the following:

Date	Time	Hours Worked
Jan. 9, 1962	2:30 AM to 5:30 AM	3
Jan. 10, 1962	2:30 AM to 3:50 AM	*2
Jan. 11, 1962	2:30 AM to 3:50 AM	*2
Jan. 12, 1962	2:30 AM to 4:15 AM	*2
Jan. 20, 1962	3:30 AM to 8:30 AM	5
Jan. 21, 1962	3:30 AM to 9:30 AM	6
Jan. 23, 1962	3:00 AM to 8:00 AM	5
Jan. 25, 1962	3:30 AM to 5:45 AM	2 1/4
Jan. 28, 1962	3:30 AM to 6:45 AM	3 1/4
Feb. 1, 1962	4:45 AM to 6:45 AM	*2
Feb. 8, 1962	3:30 AM to 5:30 AM	*2
Feb. 12, 1962	2:00 AM to 5:00 AM	3
Feb. 18, 1962	1:00 AM to 3:15 AM	2 1/4
Feb. 25, 1962	2:00 AM to 4:00 AM	*2
Total Hours claimed	41.75 at \$4.032	\$168.33
Total hours paid	41.75 at \$3.699	154.43
Difference Due		13.90
Expense Allowance		
14 days at \$3.00 per day		42.00
Total Due		\$ 55.90
*Minimum		

GENERAL FACTS: There is in evidence an agreement by and between the parties hereto, effective October 31, 1959, and as otherwise amended.

At pages 49 and 50 of said Agreement, under the Schedule of Wages, are listed the positions existing at Milledgeville and Tennille, Georgia, on the effective date of said Agreement. The listings for your Board's ready reference are:

"SAVANNAH DIVISION

Location	Position	Hourly Rate
* * *		
Milledgeville, Ga.	Agt.-Opr.	\$2.538
* * *		
Tennille, Ga.	Agt.-Opr.	2.226
Tennille, Ga.	O.T.C.	2.226
Tennille, Ga.	O.T.C.	2.226 "

The three (3) claims here presented to your Honorable Board for adjudication were handled separately on the property. However, since each claim presents common aspects, viz., similar facts, rules and violations, the Employees have, in order to reduce to the extent possible the work involved in the preparation of this brief and to eliminate repetitious handling, incorporated the claims into this one submission.

In each of the claims J. C. Beville, hereinafter referred to as claimant, was on the dates involved in these disputes the regularly assigned agent-operator at Milledgeville, Georgia. As such his assigned hours were 8:00 A. M. to 5:00 P. M. with one hour meal period. He had a work week of Monday thru Friday, Saturday and Sunday rest days. Milledgeville is a train order office.

The Central of Georgia is the respondent in each of the claims, and it will hereinafter be referred to as Carrier.

As shown by the schedule of wages set out supra, the Carrier on the effective date of the parties' agreement maintained positions around-the-clock at Tennille, Georgia. The record indicates that on or about June 25, 1960, the Carrier discontinued the third shift position at Tennille without in fact discontinuing the work thereof, and thereafter required the occupants of the first and second shift positions at Tennille to protect to the extent of an hour's overtime the work formerly performed by the occupant of the reportedly abolished position. In addition, the Carrier required claimant, who is regularly assigned to the agent-operator's position at Milledgeville, Georgia, but who resides in Tennille, to perform service at Tennille within the remaining six (6) hours of the nominally abolished third shift operator-ticket clerk's position. No emergency is involved in any of the claims covered by this submission. For such service Carrier compensated claimant at the overtime rate of the Tennille position; whereas, the pertinent rules of the parties' agreement call for the penalty rate of the claimant's regularly assigned position at Milledgeville. And, in addition, relevant rules, provided that claimant when used under the conditions obtaining in these complaints is entitled to an arbitrary expense allowance of \$3.00 per day or fraction thereof.

It may be noted in the record that when these claims were filed on the property the Employees asked that claimant be compensated for travel time and an arbitrary of two (2) hours' pay under the provisions of Rule 5 (c) and 12 (e) in addition to the compensation and/or arbitrary asked in the three (3) statement of claims upon which this action was brought. However, inasmuch as the claimant resides in Tennille, and the work in question was performed at the Tennille station, the arbitrary allowance of two (2) hours' waiting time claimed, and the claim of deadhead pay for actual time traveling have been eliminated from the compensation and/or arbitrary asked as redress for Carrier's violative acts.

EMPLOYEES' STATEMENT OF FACTS:

CLAIM NO. 1

On dates and at times set out in paragraph 2 of each of the statement of claims, Carrier called the claimant and directed him to report to the station at Tennille to perform work, including the handling (receiving, copying and delivering) of train orders, work formerly performed by the occupant of the purportedly abolished third shift position.

For this service Carrier compensated claimant under the provisions of Rule 5 (c) at the rate of the Tennille position. Whereas, the Employees contend he should have been compensated in accordance with the provisions of Rule 12 (e). Rule 12 (e) provides that where regularly assigned employees are required to perform extra or relief service, their rate of pay for

state that the Petitioners failed in all handlings on the property to cite a rule, interpretation or practice which gives them what they demanded with respect to the claim handled there (not the claims now before your Board). Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier denied the claims that were handled on the property (not the ones before your Board) at each and every stage of handling to and including the Director of Labor Relations. The claims handled on the property have no semblance of merit. Neither do the claims described in "EMPLOYEES' STATEMENT OF CLAIM" for that matter.

The rules and working conditions agreement between the parties is effective October 31, 1959, as amended. Copies are on file with the Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: The Claimant is the regularly assigned Agent-Operator at Milledgeville, Georgia, with assigned working hours of 8:00 A. M. to 5:00 P. M. Monday through Friday. Claimant lives in Tennille, Georgia, some 31 miles from Milledgeville. Claimant commutes between Tennille and Milledgeville daily Monday through Friday.

Carrier had two operator positions at Tennille and between 1:30 A. M. and 8:00 A. M. there is no operator on duty at that point. The regular assigned men at Tennille could not be used due to the Hours of Service Law and Claimant was called to fill the position at Tennille.

We have in this docket three claims that were handled separately on the property. These claims have been combined in the Employees' submission. Each claim consists of two parts. First asks that Claimant be paid the difference between the penalty hourly rate for Tennille (\$3.699) and the penalty hourly rate for Milledgeville (\$4.032). Second asks that Claimant be allowed an expense allowance of \$3.00 per day for each date he was used off his regular assignment.

The Carrier contends that the claims before this Board are not the same as those presented on the property. There are variances in the claims but they are not fatal. Carrier could not have been prejudiced by these variances and can recognize the claims now before this Board. We will dispose of the claims on their merits.

There can be no dispute that the Claimant is entitled to be paid at the higher penalty hourly rate. We will sustain the portion of each claim asking for the higher rate. Claim (1) \$11.90, Claim (2) \$3.32, Claim (3) \$13.90.

The remaining question to be determined is whether Claimant is entitled to an expense allowance of \$3.00 per day for each date he was used off his assignment. Employees rely on Rule 12(a) of the effective Agreement to support their position. Rule 12(a) reads:

"(a) Employees required to leave their permanent positions to work extra or to work on other jobs shall be allowed \$3.00 per day or fraction thereof additional, while they are on such work, for expenses, and will not be required to work for less than the salary of their permanent positions or work longer hours.

"This paragraph will not apply to positions covered by Rule 11. If any such employe would receive time and one-half rate through the application of Rule 6 and 7, on any day such service is performed the time and one-half rate shall apply on that day or days."

It is to be noted that each of the times set out in the claims was a time outside Claimants regular assignment.

This particular rule of the Agreement has not previously been interpreted by this Board. We feel the key words in this rule are ". . . required to leave their permanent positions . . ." In these claims the Claimant worked extra outside of his regular assigned hours. If he had left his position to work elsewhere he would be entitled to be paid an expense allowance under Rule 12(a). In the claims considered here the Claimant is not entitled to an expense allowance.

We will deny the portion of each claim asking for a \$3.00 per day expense allowance.

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 has been violated as set in Opinion of Board.

AWARD

Claim sustained in part and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.