

Award No. 15148
Docket No. TE-13963

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that:

1. Telegrapher B. J. Engle, Relief Agent and Operator, Temple and Granger, Texas should have been paid at the time and one half rate for Wednesday, October 18, 1961, on which date, one of his assigned rest days, he was required to attend a Railroad investigation as a witness for the Carrier; and that, therefore,

2. Telegrapher B. J. Engle shall be paid the difference between the straight time rate allowed and the time and one-half rate to which entitled.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. B. J. Engle, was the regularly assigned incumbent of a Rest Day Relief position with a scheduled work week as follows:

Thursday	12:01 AM-8:01 AM	Telegrapher	Temple	\$2.495 Hour
Friday	12:01 AM-8:01 AM	Telegrapher	Temple	2.495 Hour
Saturday	9:30 AM-5:30 PM	Agent-Teleg.	Temple	20.60 Day
Sunday	8:00 PM-5:00 AM	Telegrapher	Granger	2.495 Hour
Monday	8:00 PM-5:00 AM	Telegrapher	Granger	2.495 Hour
Tuesday	Rest Day			
Wednesday	Rest Day			

On Saturday, October 7, 1961, at about 10:25 A.M., while claimant was on duty as Agent-Telegrapher at Temple, Texas, MKT Train No. 52 passed a home signal in stop position while approaching the GC&SF (Santa Fe) operated tower in Temple. Claimant was not involved; however, a few days later he received the following notice:

Noon, and from 1:00 P.M. until 1:30 P.M. He made claim for eight hours' pay on his daily time report, Form 1588, dated October 18, 1961, copy of which is attached as Carrier's Exhibit A, Sheet 1, and was allowed eight hours' pay at the straight time rate of \$2.495 per hour, the rate of the position of Agent-Telegrapher, Granger, the position last worked by Claimant Engle before attending the investigation, and also the rate of position of Telegrapher-Clerk, Temple, the position first worked by him subsequent to attending the investigation.

The allowance of eight hours' pay for attending the investigation at Temple was improper, as Rule 10 clearly provides only for payment at the daily rate of pay while in attendance at investigations under the facts and circumstances involved here.

On November 17, 1961, Claimant Engle wrote the Paymaster at Denison, Texas (Carrier's Exhibit A, Sheet 2), claiming that there was a shortage in his second period October, 1961 pay check amounting to \$14.89, and that this resulted from Carrier's failure to pay him eight hours at the time and one-half rate of the position of Agent-Telegrapher at Temple, Texas, for October 18, 1961, when he attended investigation at Temple as witness for the Carrier.

There was, of course, no basis for any claim of eight hours or a minimum day at either the straight time rate or at the time and one-half rate, and there was no basis for a claim of eight hours or a minimum day at the time and one-half rate of the position of Agent-Telegrapher at Temple, as alleged by Petitioner here, in view of the clear and unambiguous provisions of Rule 10, covering court and investigation attendance as contained therein.

The claim contained in Mr. Engle's letter of November 17, 1961 was, therefore, timely declined by General Superintendent R. B. George, to whom it was referred by the Paymaster, and was subsequently appealed to the undersigned highest operating officer of the Carrier authorized to handle time claims, and declined by the undersigned on February 16, 1962 (Carrier's Exhibit A, Sheet 9). Conference on the property has been neither requested nor held.

Actual photocopy reproductions of the correspondence between the parties in connection with this claim is attached as Carrier's Exhibit A, Sheets 2 through 10.

The controlling Agreement, No. DP-190, with Rules effective September 1, 1949 and Rates of Pay effective February 1, 1951, and the National Agreement of August 21, 1954, to which both the Missouri-Kansas-Texas Railroad Company and The Order of Railroad Telegraphers are parties, are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Before any consideration can be given to the merits of this claim, we must give heed to the motion made by Carrier that the claim be dismissed as it was not discussed in conference, as required by the Railway Labor Act.

In Carrier's initial submission to this Board there appears this assertion: "Conference on the property has been neither requested nor held." A search

of Petitioners' Rebuttal Submission reveals that there is neither any denial of nor any reference made to Carrier's statement that "a conference on the property has been neither requested nor held." The silence of the Petitioner is a tacit admission that Carrier's statement is true, and that no conference was either held nor requested on the property.

As is stated in Award 11896:

"The question raised by the Carrier has been discussed in prior awards of this Board. The Federal Courts have held that the Railroad Adjustment Board has no authority to adjudicate a dispute unless the statutory requirements of the Railway Labor Act are complied with which unconditionally impose upon all Carrier and Employee representatives legal duty to hold a conference in connection with each dispute that they are unable to settle by other means."

See also Awards 11434 and 11484.

Furthermore, in Award 13097 it is stated:

"The Organization is the moving party before this Board. If the Petitioner wants to invoke the action and assistance of this Board in adjusting a dispute between the Petitioner and the Carrier, Petitioner must demonstrate that every effort to settle his claim has been exhausted on the property, and that includes the requirement of the Railway Labor Act that a conference be held between the parties."

For the foregoing reasons the claim must be dismissed.

Any attempt to discuss the merits of this claim would be merely academic and pure dictum, and such discussion would not be entitled to any weight, either as a precedent or otherwise.

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

AWARD

Claim dismissed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January 1967.

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