

Award No. 15464
Docket No. TE-14455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 when it failed and refused to permit Extra Operator C. A. English to work on the third shift at Terra Cotta on March 20 and on the third shift at Macon Junction, Georgia, on March 21, 1963.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate C. A. English eight (8) hours at the pro rata rate of each of the positions of which he was deprived of filling.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties when it failed and refused to compensate Extra Operator G. M. Cone at the time and one-half rate for eight (8) hours' service performed at Terra Cotta, March 20, and at Macon Junction, Georgia, on March 21, 1963.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate G. M. Cone the difference between the eight (8) hours at the straight time rate paid, and eight (8) hours at the time and one-half rate due for services performed at Terra Cotta on March 20, and at Macon Junction, Georgia, on March 21, 1963.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective October 31, 1959, and as otherwise amended. Copies of said Agreement, as prescribed by law, are assumed to be on file with your Board and are, by this reference, made a part hereof.

'Inasmuch as he (Mr. Cone) advised you that he did not want the overtime, naturally, it should go to the senior extra operator. My understanding we did not have and do not have an extra operator; therefore, we request it be paid to the regular employe February 20, to R. J. Murdock, and February 21, to W. M. Dunaway.'

The foregoing material change in the claim makes it null and void, and the claim is barred for that reason.

Without prejudice to the foregoing positive position, for the sake of argument we shall discuss the merits of the dispute:

This is a companion claim to Docket TE 9912 above. Inasmuch as Extra Operator Cone worked only 5 days of 8 hours each in his workweek beginning with Monday, he is not entitled to the payment here demanded. Neither the effective schedule agreement, interpretations nor past practice support the claim. The claim is denied for these reasons as well as those shown in the decision under Docket TE 9912 immediately above."

The foregoing constituted the full and final decision of the Director of Personnel, and completed the handling on the property.

There are no rules, interpretations, or practices to substantiate the petitioner's claim. For that reason, the claim has been denied at each and every stage of handling on the property, as evidenced by the record.

There is an agreement in effect between the parties, reprinted on October 31, 1959, as amended, which is on file with the Board. By reference, same is made part and parcel of this submission as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: The 40-hour week rules here involved, as they apply to identical facts, have been interpreted a number of times in the manner urged by the Employes. Awards 6970, 6971, 6972, 6978, 7391, 10391, 10803, 12654, 12760, 13860, among others. Award 13860 involved these same parties and one of the present Claimants. The precedent established by these awards is controlling.

Carrier, however, contends that the claim must be dismissed because the General Chairman amended the claim improperly during handling on the property. This contention arose when Claimant Cone wrote a letter to the Carrier in which he attempted to interpret the rules contrary to the position of the General Chairman, stated that he had no desire to collect the overtime claimed, and if the claims are justified suggested the money be donated to the flower fund.

When the General Chairman learned of this letter he told the Carrier he would respect Mr. Cone's wishes, although he disagreed with his views, and substituted another claimant in the place of Cone. Carrier objected to such amendment, whereupon the General Chairman withdrew his suggested substitution by letter dated June 5, 1963.

We believe these developments left the claim precisely as it was first presented and appealed on the property. And, since this is the same claim presented to the Board, we must decline the Carrier's plea for dismissal.

For the reasons set out first above, the claims will be sustained.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.