

Award No. 16288
Docket No. TE-14945

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, 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. The Carrier violated the provisions of the Agreement between the Tennessee Central Railway Company (Carrier) and The Order of Railroad Telegraphers, Division 64, (Organization) when, on April 22, 1963, and each day thereafter, Monday through Friday, of each week, the Carrier caused Mr. Tarpley to commute from Baxter, Tennessee, to Cookeville, Tennessee, and return, and caused him to perform extra work at Cookeville, Tennessee, in addition to performing the duties of Agent-Operator at Baxter, Tennessee, the position to which he is assigned. Mr. Tarpley, in line with Rule 10 of the Agreement, is entitled to eight hours' pay each day, Monday through Friday, on the assigned position at Baxter, Tennessee. Since Mr. Tarpley was instructed to and caused to perform extra work at Cookeville, Tennessee, beginning April 22, he is entitled, under Rule 14 of the Agreement, to be compensated for the work performed at Cookeville, which is extra work, at the time and one-half rate.

2. The Carrier shall compensate Mr. C. W. Tarpley for four hours each day, Monday through Friday, beginning April 22, 1963, and continuing through May 8, 1963, plus travel time, at the time and one-half rate for the Agent-Operator position at Baxter, Tennessee, plus expenses from the time Mr. Tarpley leaves Baxter until he returns to Baxter, plus travel expenses; and the Carrier shall compensate Mr. Tarpley May 9, 1963, and thereafter, so long as he is required to perform this extra work at Cookeville, for the time actually worked plus travel time at the time and one-half rate for the Agent-Operator position at Baxter, plus expenses and travel expenses. This is in addition to compensation of eight hours at straight time each day, Monday through Friday, as Agent-operator at Baxter, as per Rule 10 (Guarantee Rule).

involved a single patron who has stated that his business could be easily and satisfactorily handled by the Cookeville agency. In the light of all the existent circumstances faced by the Railway Company, it appears that your expression of opinion that an Agent should be maintained constantly at Baxter in the hope that someone may come to that station, perhaps from far out of town, to ship or receive some freight, is not well founded.

The claim as now made not only is barred, but is also otherwise respectfully declined for lack of merit.

Yours very truly,

/s/ Caskey Knott
Supervisor of Wages"

"March 23, 1964
File: 203 Your 145-132

Mr. Caskey Knott, Supervisor of Wages
Tennessee Central Railway Company
158 First Avenue South
Nashville, Tennessee

Sir:

Please refer to my letter dated December 28, 1963 and your reply dated January 31, 1964 with reference to the rate of pay at which the claimant should be compensated for work at Cookeville, Tennessee.

In my letter I stated that "The claimant is due to be compensated for his work at Cookeville at the rate of pay of the only existing wage schedule at Cookeville, that of Agent."

This is to advise you that, regarding the rate of pay and compensation for the work at Cookeville, we will stand on the claim as filed.

Yours truly,

/s/ W. H. Wiggerman
W. H. Wiggerman,
General Chairman
Division 64"

(Exhibits not reproduced.)

OPINION OF BOARD: Pursuant to instructions from the Carrier, Claimant, Agent-Operator at Baxter, Tennessee, traveled approximately eight miles to Cookeville, Tennessee where he assisted the Agent there in performing office duties so that the latter would have time available within which to solicit additional business. Under this arrangement which was temporary in nature Claimant departed Baxter each day as soon as he could practically do so following completion of certain duties and returned to Baxter each afternoon in time to go off duty there at his regular time.

The present claim was filed alleging this arrangement violated the Agreement because "there is no rule in the Telegraphers' Agreement which permits the Agent at Baxter, Tennessee to perform work at Cookeville under such situation and conditions."

The claim was denied, appealed and finally denied by the highest officer of the Carrier designated to handle such matters on December 3, 1963.

The burden is not upon the Carrier to show that its action is authorized by some provision of the Agreement. Rather, the burden is upon the complaining employees to show that the action taken violates some part of the Agreement. When viewed in this context the claim must be denied since the Employees have failed to meet the burden thus placed upon them.

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 Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.