

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, 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:

CLAIM NO. 1

1. Carrier violated the terms of an Agreement between the parties hereto when on the dates hereinafter set forth, it caused N. M. Williams, regular occupant of the agent's position at Old Hickory, Tennessee, to perform work more than eight (8) hours per day and failed and refused to compensate him in accordance with the Overtime and Call Rules of the Agreement.

July 22, 1963	One (1) hour and fifteen (15) minutes.
July 23, 1963	Two (2) hours.
July 25, 1963	One (1) hour and fifteen (15) minutes.
July 26, 1963	One (1) hour.
August 14, 1963	One (1) hour.
August 19, 1963	Thirty (30) minutes.
August 20, 1963	One (1) hour and ten (10) minutes.
August 21, 1963	One (1) hour and thirty (30) minutes.
August 22, 1963	One (1) hour and fifteen (15) minutes.
August 24, 1963	One (1) hour and fifteen (15) minutes.
August 26, 1963	Thirty (30) minutes.
August 27, 1963	Forty (40) minutes.
August 28, 1963	Two (2) hours and thirty (30) minutes.
August 29, 1963	Two (2) hours.
August 30, 1963	Thirty (30) minutes.

Eighteen (18) hours and twenty (20) minutes.

2. Carrier shall, because of the violations set out in paragraph 1 hereof, compensate N. M. Williams eighteen (18) hours and twenty (20) minutes at the overtime rate.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties hereto when on the dates hereinafter set forth it caused R. A. Honeycutt, relief agent, and N. M. Williams, regular occupant of the agent's position at Old Hickory, Tennessee, to perform work more than eight (8) hours per day and failed and refused to compensate them in accordance with the Overtime and Call Rules of the Agreement:

(a) Mr. Honeycutt:

Jan. 24, 1964 One (1) hour and thirty (30) minutes.

(b) Mr. Williams:

Feb. 3, 4, 5, 6,
7 and 8,
1964 Thirty (30) minutes.

Feb. 10 and 11,
1964 Two (2) hours and twenty (20) minutes.

Feb. 12, 13, 14,
15, 17, 18,
19, 20, 21,
22, 24, 25,
26, 27, 28
and 29,
1964 Thirty (30) minutes.

2. Carrier shall, because of the violations set out in paragraph 1 hereof, compensate each, R. A. Honeycutt and N. M. Williams, for time worked in excess of eight (8) hours on each date at the overtime rate.

CLAIM NO. 3

1. Carrier violated the terms of an Agreement between the parties hereto when on the dates hereinafter set forth it caused N. M. Williams, regular occupant of the agent's position at Old Hickory, Tennessee, to perform work more than eight (8) hours per day and failed and refused to compensate him in accordance with the Overtime and Call Rules of the Agreement.

Dec. 16, 1963 One (1) hour.

Dec. 17, 18, 19,
20, 1963 Thirty (30) minutes.

Dec. 23, 1963 One (1) hour and forty (40) minutes.

Dec. 24, 25, 26,
27, 1963 Thirty (30) minutes.

Dec. 30, 1963	Two (2) hours.
Dec. 31, 1963	Thirty (30) minutes.
Jan. 2, 1964	Thirty (30) minutes.
Jan. 3, 1964	Four (4) hours and thirty (30) minutes.
Jan. 4, 1964	Thirty (30) minutes.
Jan. 6, 1964	One (1) hour and thirty (30) minutes.
Jan. 7, 1964	Forty-five (45) minutes.
Jan. 8, 9, 10, 13, 1964	Thirty (30) minutes.

2. Carrier shall, because of the violations set out in paragraph 1 hereof, compensate N. M. Williams for time worked in excess of eight (8) hours on each date at the overtime rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its telegraphers, hereinafter referred to as Employees, effective May 1, 1924, and as otherwise amended. Copies of said Agreement are available to your Board and are by this reference made a part hereof.

This dispute arose over the question: Are Claimants N. M. Williams, regular occupant of the monthly rated agent's position at Old Hickory, Tennessee, and R. A. Honeycutt, relief agent, Old Hickory, entitled to pay for services performed outside of their regular tour of duty? The Employees contend that they are entitled to the provisions of the Call and Overtime Rules No. 4(a) and 5.

Prior to September 21, 1924, the Organization represented the agent and an operator-clerk at Old Hickory. By letter of understanding dated September 21, 1924, the pertinent part of which reads as follows:

"3. With reference to the agency at Old Hickory, it was agreed that this agency comes within the purview of paragraph (c), Interstate Commerce Order Ex Parte 72, in that Old Hickory is a large and important station, and that the duties of the agent are wholly supervisory. This agency, therefore, is to be eliminated from the Agreement with the Telegraphers, with the understanding that if and when there should be a vacancy in the position of agent at this point, preference is to be given to employes in agency and telegraph service in the selection of a successor."

the agent's position at Old Hickory was removed from the scope of the parties' Agreement.

For the record, paragraph (c) of Ex Parte 72 reads:

"Supervisory station agents at large and important stations whose duties are wholly supervisory, and who are of necessity vested with greater responsibilities, duties and authority than the agents hereinabove classed as subordinate officials, may be designated officials and excluded from the class of subordinate officials."

Affidavit of Assistant to the General Superintendent-Chief Engineer J. M. Pewitt evidencing practice in applying the governing rule as explained to Employees in conferences on the property is attached marked Carrier's Exhibit No. 1.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue to be determined herein is whether or not Claimants are entitled to be paid overtime for work performed after regular duty hours at Old Hickory, Tennessee.

The Organization's position is that inasmuch as it is undisputed that Claimants worked overtime on the dates in question, Rule 4 (a) of the Agreement applies, thus entitling Claimants to time and one-half overtime pay.

The Carrier's contention is that the 1919 Agreement between the parties was merged into and became a part of the 1924 Agreement entered into between the parties and that by virtue of said 1919 Agreement occupants of positions such as at Old Hickory would not claim overtime for remaining on duty to complete the day's work; that inasmuch as the monthly rated agency positions at Emory Gap, Rockwood, Crossville, Monterey, Algood and Edgoten are not entitled to the type of overtime payment claimed in this dispute, then by virtue of Letter of Agreement between the parties effective May 1, 1963, the Claimants are not entitled to the payment of overtime; that the overtime work in question was not authorized by Carrier.

Rule 4 (a) of this Agreement provides:

"Rule No. 4 (a). Except as otherwise provided:

Time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Rule 8.

Employes worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Section 1 of Rule 8.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime."

The Agency at Old Hickory, Tennessee was outside the Agreement until May 1, 1963 when the parties agreed as follows:

"(1) Effective May 1, 1963, the position will be returned to the scope of the agreement with Employees represented by The Order of Railroad Telegraphers, with a six days per week assignment, subject to all of the provisions of the Agreement as presently applied to the monthly rated agency positions at Emory Gap, Rockwood, Crossville, Monterey, Algood and Edgoten.

(2) The said position at Old Hickory will not be bulletined nor will there be any change in the rate of pay of the position or the basis of payment, by reason of this understanding."

First in regard to Carrier's contention that the 1919 Agreement became a part of the 1924 Agreement, this argument was rejected by this Board in Award 11331 (Coburn), when the Board in citing Award 3813 said:

"It is an established rule of contract law that where a later contract is entered into between the same parties in relation to and covering the same general subject matter as the earlier one, then the later contract supersedes the earlier one. The later contract is presumed to express the final agreement of the parties, and terms and conditions in the earlier agreement not included in the later one nor expressly reserved or continued by it are deemed superseded and abandoned. And this is so even though the later contract does not in express terms state that it supersedes the earlier one."

In support of its position that the monthly rated agents did receive overtime, the Organization introduced statements from two employes who stated that they had worked the agency at Monterey, Tennessee, and had been paid for overtime at time and one-half, and a statement from an employe who had worked at Lebanon, Tennessee, avering that he had worked overtime and was paid time and one-half pay for said work. The Organization points out that Carrier did not deny these statements at any time on the property.

A close examination of the record shows that Carrier did not at any time on the property specifically deny the allegations of these employes that they had worked overtime and were paid for said overtime work at time and one-half. Therefore, we must accept these statements as being true statements. Thus, the Organization has shown by positive evidence that the provisions of the Agreement as applied to the monthly rated positions named in the Letter of Understanding, effective May 1, 1963, authorize overtime payment for overtime work.

Finally, in regard to Carrier's contention that the overtime work was not authorized by Carrier, we find that the record is void of any evidence showing that Claimants were instructed by Carrier not to work overtime. Further, Carrier does not contend that the Claimants did not work overtime on the dates in question.

Therefore, in view of the fact that Claimants did work overtime and that overtime pay has been authorized at one of the agencies listed in the Letter of Understanding and, further, inasmuch as Rule 4 (a) of the Agreement authorizes overtime pay at time and one-half for overtime work performed, we will sustain these claims.

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 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June 1968.

CARRIER MEMBERS' DISSENT TO
AWARD NO. 16448, DOCKET TE-15282
and
AWARD NO. 16449, DOCKET TE-15887
[Referee Dugan]

When the parties put the Old Hickory agency position under the Agreement, they agreed it would be "subject to all of the provisions of the Agreement as presently applied to the monthly rated agency positions at Emory Gap, Rockwood, Crossville, Monterey, Algood and Edgoten." On the thin thread of evidence that daily overtime had been paid at only two monthly rated agency positions, the Majority concluded that "the Organization has shown by positive evidence that the provisions of the Agreement as applied to monthly rated positions named in the Letter of Understanding, effective May 1, 1963, authorize overtime payment for overtime work." Based on the record, this conclusion was not warranted. The record was void of evidence that the daily overtime provision of the Agreement had ever been applied at all of the monthly rated agency positions named in the Letter of Understanding. In short, the Organization, which had the burden of proof, did not prove that which was necessary to support the Majority's conclusion and to sustain the claims.

For this and other reasons, these awards are erroneous, and we dissent.

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