

Award No. 16449
Docket No. TE-15887

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Tennessee Central Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate W. H. Wiggerman, Agent, Lebanon, Tennessee, for time worked in excess of eight hours, as follows:

July 10, 1964 - 1 hour; July 20, 1964 - 45 minutes; August 7, 1964 - 45 minutes; August 10, 1964 - 1 hour 30 minutes; August 13, 1964 - 1 hour 10 minutes; September 9, 1964 - 1 hour; September 18, 1964 - 1 hour 30 minutes; September 22, 1964 - 1 hour 15 minutes; October 5, 1964 - 1 hour 15 minutes; October 7, 1964 - 1 hour; October 12, 1964 - 30 minutes.

2. Carrier shall compensate W. H. Wiggerman at the time and one-half rate for the overtime worked (total 12 hours and 40 minutes).

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 otherwise amended. Copy of said Agreements are available to your Board, and are by this reference made a part hereof.

At page 17 of said Agreement (Schedule of Wages) are listed the positions in existence at Lebanon, Tennessee, the station involved in this claim, on the effective date of the Agreement. For ready reference listing reads:

"Lebanon, Tennessee —

Agent	\$178.16 per month
Operator-Clerk	.60¾ per hour
Operator-Clerk	.52 per hour
Operator-Clerk	.52 per hour"

CARRIER'S STATEMENT OF FACTS: Claimant, agent-operator at Lebanon, Tennessee, reported having worked in excess of his assigned hours on the dates of these claims, and turned in on the Check Roll for his station claims for payment at punitive overtime rates which were declined by the Timekeeper.

Both the work and the claims were unauthorized.

Under dates of September 4 and October 21, 1964, claims in his behalf were timely filed and thereafter timely progressed, being declined at each stage of handling on the property.

Correspondence reflecting the handling given is attached hereto marked Carrier's Exhibits Nos. 1 to 11, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue and facts in this dispute are similar to the issue and facts in Docket No. 15282, Award 16448, involving the same parties to this dispute, and inasmuch as said Award 16448 is controlling, we will sustain the claim.

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

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 Edgote." 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.

J. R. Mathieu

R. A. DeRossett

C. H. Manoogian

C. L. Melberg