

Award No. 16936
Docket No. TE-15342

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to pay N. Tylee on September 17 and 18, 1963, at the proper rate of pay for work performed.

2. Carrier shall compensate N. Tylee for the difference between what he was paid and what he should have been paid, or a total of \$4.33 additional compensation for dates involved.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

For many years prior to the time of this dispute, the Carrier maintained an interlocking station at Etta, South Carolina. Approximately twelve years ago the station was abolished and thereafter the signals and switches were controlled from the station at Lane, South Carolina by centralized traffic control. Subsequently, the Carrier embarked on an expansion of its CTC operation and in the course of doing so required the services of a telegrapher at Etta September 17 and 18, 1963, to cut in a segment of the centralized traffic control. Due to an alleged shortage of extra telegraphers, the Chief Dispatcher instructed Claimant Tylee to report to Etta for the purpose of performing service on Tuesday, September 17, and Wednesday, September 18, which were assigned rest days of his regular position.

At the time, N. Tylee was the regularly assigned occupant of the second shift telegrapher position at "SY" Tower, assigned rest days Tuesday and Wednesday, with a basic straight time rate of \$2.673 per hour. On the dates specified, Mr. Tylee complied with the instructions of the Carrier by working his rest days at Etta. Through the application of Article 5½ of the Agreement, he received time and one-half for each date. He was, however, paid on

the basis of the Etta rate instead of the rate of his own position, namely "SY" Tower.

Because of its failure to allow the proper rate, the General Chairman presented claim in behalf of Mr. Tylee to Management on November 11, 1963 for the difference in the amount of \$4.33.

ORT Exhibits 1 through 8 are copies of all relevant correspondence exchanged between the parties during the handling of this dispute on the property.

The foregoing attests that the subject matter of dispute has been handled on the property in the manner prescribed by law and the rules of procedure of your Board but failed of settlement. The dispute is, therefore, appealed to your Honorable Board for adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Clerk-Telegrapher N. Tylee, assigned to "SY" Tower, Charleston, South Carolina, on regular assignment Thursday through Monday, was employed on an extra basis on his rest days Tuesday and Wednesday, September 17 and 18, 1963, at Etta, South Carolina. Mr. Tylee was paid at overtime rate of \$3.739 for the 16 hours' work performed at Etta. Claim is made for difference between compensation earned for 16 hours at that rate and the overtime rate of \$4.009 paid on his regular position at "SY" Tower.

The organization based its claim on alleged violation of Article 8 of the agreement, reading as follows:

"ARTICLE 8.

RELIEF WORK — EXPENSES

Regularly assigned employees will not be required to perform relief work except in cases of emergency, and when required to perform relief work, and in consequence thereof, suffer a reduction in the regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations."

Mr. Tylee did not "suffer any reduction in regular compensation" under circumstances of this claim.

There being no violation of Article 8, or any other article of the agreement, the claim was declined.

OPINION OF BOARD: Claimant is regularly assigned to "SY" Tower with rest days Tuesday and Wednesday of each week. He was required to perform service at Etta, South Carolina on September 17 and 18, 1963, his assigned rest days at "SY" Tower. Claimant was compensated for overtime at the Etta rate of pay instead of the "SY" Tower rate of pay. A difference of \$4.33 in rates of pay. The question to be resolved is which basic rate is applicable.

It is the position of the Employees that the applicable rules of the Agreement provide that a regularly assigned employee required to work on a position other than his own must be paid at the higher rate of the two positions.

Carrier contends that Claimant was used at Etta in the capacity of a extra employe on the dates involved and suffered no reduction in regular compensation.

We find that the rules relied upon and set forth in the Employees' submission to this Board, specifically Paragraph (i), Section 1 of Article 5½, Article 12, paragraph (i), Article 8 and Article 11(a) do contemplate and provide the rate of pay for an employee who is required to perform service on assigned rest day or days.

Since Claimant was required to perform service on his assigned rest days at Etta he was entitled to payment at the higher rate, that being the "SY" Tower rate of pay. We must 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 5th day of February 1969.