



Award No. 17162

Docket No. TE-16518

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

James Robert Jones, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri-Kansas-Texas Railroad Company, that:

1. Carrier improperly compensated S. L. Reich, Agent-Telegrapher, Wagoner, Oklahoma, for service performed on March 12, 1965.
2. Carrier shall now allow Mr. Reich compensation for the difference between that which he has been allowed and that to which he is entitled for that date.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant's assigned hours are 6:45 A.M. until 3:45 P.M. daily except Fridays. On Friday, March 12, 1965, the claim date, he was required by the Carrier to report to the office of the Carrier's attorney in Muskogee, Oklahoma, which is 15.6 rail miles from Wagoner. He was instructed to, and did, report at 7:00 A.M. Subsequently, on the same date, he was required to attend a trial in which he was not directly involved at the Wagoner County Courthouse, Wagoner, Oklahoma, and was not released until 3:00 P.M.

For his service as a Carrier witness on that date, Claimant was reimbursed an amount of \$5.80 for meals and automobile expense. However, his claim for eight hours' pay at the time and one-half rate was denied by the Carrier on March 16, 1965. On appeal, he was allowed eight hours' pay at the straight time rate. The claim appealed to your Board, therefore, is for the difference between eight hours' pay at the straight time rate and eight hours' pay at the time and one-half rate.

Claim was handled on the property in the usual manner and discussed in conference on March 8, 1966.

Copies of correspondence reflecting the handling of this claim on the property are appended hereto as T.C.U. Exhibit #1. (Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant is regularly assigned as Agent-telegrapher at Wagoner, Oklahoma, 6:45 A.M. to 3:45 P.M., one hour off for lunch, Saturday through Thursday, rest day Friday, monthly rate of pay \$606.1299.

Friday, March 12, 1965, Claimant attended court as a witness for the Carrier from 7:00 A.M. to 3:00 P.M. for which he claimed eight (8) hours pay at time and one-half. The claim was declined and in lieu thereof he was allowed the daily rate of his position for eight hours attending court as provided in Rule 10 of current Telegraphers' Agreement. The claim before the Board is for the difference between the amount claimed and the amount allowed.

A copy of all correspondence exchanged by the parties in handling this claim on the property is attached. (Correspondence not reproduced.)

OPINION OF BOARD: There is no dispute as to the facts in this case. Claimant was required by Carrier to meet with Carrier's attorney and thence to attend a trial in which Claimant was not directly involved. Both the meeting with the attorney and the attendance at the trial occurred on Claimant's rest day, Friday, March 12, 1965.

There are two rules involved in this dispute and on which Claimant bases his claim for compensation at the rate of time and one-half for service performed on his rest day. These are Rule 10 concerning Court and Investigation Attendance; and, Rule 26 concerning the 40-Hour Work Week.

Rule 10 states:

"Employees required to attend Court or Railroad investigation in which they are not directly involved will receive their daily rate of pay while in attendance, necessary expenses while away from home and transportation, court fees and mileage to be assigned to the Railroad."

Claimant contends that "daily rate of pay" as specified in Rule 10 means pay at the rate of time and one-half on rest days or outside regularly assigned hours.

Carrier contends that this phrase in Rule 10 means "straight time."

Claimant's contention that neither construction, i.e. straight time rate or time and one-half rate, is readily apparent from reading Rule 10 alone is a point well taken.

Ordinarily, we would hold that any service required of an employee by the Carrier on employee's rest day should be compensated at the punitive rate. However, if the contract provisions clearly indicate another rate of pay, this Board cannot rewrite the contract for the parties.

Such is the case here. "Daily rate of pay" as provided in Rule 10 seems to be defined clearly in Rule 26 which reads in part: "To determine the daily rate, multiply the straight time hourly rate by eight." This contention by Carrier has not been refuted by Petitioner.

Our thoughts on the adequacy of compensation for service performed on a rest day should not be a part of this opinion. Our sole function is to interpret the contract agreed to by the parties. It seems clear that Rule 10 provides for straight time rates of pay for court and investigation appearances as in the case before this Board.

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 2, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.