



Award No. 17184

Docket No. TE-16364

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven and Hartford Railroad, that:

- 1. Carrier violated the Agreement between the parties when it failed and refused to compensate Mr. V. M. Zolinsky in accordance with the Agreement by calling upon Mr. Zolinsky to perform work in advance of his assigned hours.
2. Carrier shall now compensate Mr. V. M. Zolinsky the one hour at time and one-half rate that was cut from his time slip.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between The New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949 as amended and supplemented is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

TCU Exhibits Nos. 1 through 7 are reproductions of all the correspondence exchanged with the Carrier. There is no dispute as to the facts.

Mr. Zolinsky held a relief assignment at the time this dispute arose which included the following:

Table with 4 columns: Day of Week, Location, Assigned Hours, Position. Rows include Saturday (Stamford, Conn., 8:00 AM to 4:00 PM, Telegrapher-Clerk), Sunday (Stamford, Conn., 8:00 AM to 4:00 PM, Telegrapher-Clerk), Monday (Darien, Conn., 5:00 AM to 2:00 PM, Telegrapher-Clerk), Tuesday (So. Norwalk, Conn., 6:30 AM to 3:30 PM, Telegrapher-Clerk), Wednesday (So. Norwalk, Conn., 6:30 AM to 3:30 PM, Telegrapher-Clerk).

On Sunday, January 24, 1965, Mr. Zolinsky filled his assignment at Stamford, hours 8:00 A.M. to 4:00 P.M. He was notified by the Carrier to report at Darien at 4:00 A.M. Monday, January 25, 1965 or one hour in advance of the advertised reporting time of his position to apply salt and sand to the station platform at Darien, Connecticut due to snow conditions.

Mr. Zolinsky reported as instructed, that is, 4:00 A.M., or one hour in advance of his reporting time as instructed, he claimed two (2) hours at rate of one and one-half times the pro rata rate of the position. The Carrier paid him for one (1) hour at the time and one-half rate.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Claimant in this case, Operator V. M. Zolinsky, owned a regular relief position of Agent, covering Stamford Saturday and Sunday, Darien on Monday, and South Norwalk on Tuesday and Wednesday. On Monday, January 25, 1965, due to a heavy snow-storm, Mr. Zolinsky was required to report one hour in advance of his regular reporting time for the purpose of clearing snow from the station platform. For service rendered on Monday, January 25, 1965, claimant was paid on a continuous time basis through to the completion of his regular duty, receiving one hour at the punitive rate for service rendered in advance of his regular reporting time, plus payment for his regular assignment.

Under date of February 17, 1965, claim was instituted on behalf of Mr. Zolinsky for payment of one hour at the punitive rate for service rendered under the call provisions of the schedule agreement. The claim was progressed through the prescribed channels on the property up to and including the undersigned.

Copies of General Chairman Kelleher's appeal of April 12, 1965, and of decision by the undersigned dated June 11, 1965, are attached as Carrier's Exhibits "A" and "B," respectively.

The claim was denied on the property on the basis that service performed by the claimant was continuous with his regular work assignment.

The schedule agreement dated September 1, 1949, as amended, between the parties, and the National Non-Operating Agreement of August 21, 1954, are on file with this Board and are, by reference, made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was required on January 25, 1965, to report for work at 4 A.M. rather than his regular starting time of 5 A.M. He remained through his regular work period and was compensated for one hour at the time and one-half rate in addition to payment for his regular assignment.

Carrier contends that his service was continuous and should be compensated at the overtime rate.

Claimant, however, contends he should have been compensated under the Call Rule, Article 7(a), which provides the equivalent of two hours at time and one-half rate as a minimum payment for two hours work or less.

The question is: How shall an employe required to report for duty before his regular starting time and continue to work through his regular shift be compensated?

This is far from a new question. On April 25, 1919, Interpretation No. 3 to Supplement No. 13 to General Order No. 27 was issued by the Director General of Railroads. This Interpretation covered the payment of a teleg-

rapher under various circumstances. Examples were used to illustrate the intent of certain rules, and one is pertinent to the instant case:

“Examples

“Assumed regular assigned work-day hours 8 A.M. to 4 P.M.
(Rate 50¢ per hour.)

...

“Notified or called.

“(d) 7:30 A.M. to 6 P.M., 10 1/2 hours.

“Computed:

7:30 A.M. to 8 A.M., call, minimum allowance, 2 hours, at 75 cents	\$1.50
8 A.M. to 5 P.M. (excluding meal hour), 8 hours, at 50 cents	4.00
Meal hour worked, 1 hour, at 75 cents	.75
5 P.M. to 6 P.M. continuous time (overtime, 1 hour, at 75 cents	.75
	<hr/>
	\$7.00”

Clearly, the 30 minutes worked prior to and connecting with the start of the regular assignment was interpreted to constitute a Call and should be so compensated.

In the history of this issue we next come to the United States Railroad Labor Board which issued Decision No. 757 on March 3, 1922, containing rules governing telegraphers on many railroads, including the Carrier involved in this case. On April 15, 1924, Interpretation No. 1 to Decision No. 757 was issued. One of the question-and-answer segments of this interpretation refers to the Call Rule, as follows:

“Question—How shall an employee be compensated who is required to report for duty before his regular starting time and continues to work through his regular shift?

“Answer—He shall be paid a call (3 hours for 2 hours' work or less) and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time.”

How have the Overtime and Call Rules been changed since the foregoing decision?

The Overtime Rule in effect now provides:

“Article 6 Basic Day—Overtime.

“* * *

“(b) Except as otherwise provided, time worked in excess of eight (8) hours on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate.

“(c) For continuous working service after regular working hours employes will be paid time and one-half on the actual minute basis.”

The Call Rule now in effect provides:

“Article 7—Call Rule.

“(a) Employes notified or called to perform service not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.”

The rule in question with Decision 757 provided pro rata for the ninth hour and time and one-half thereafter. The present language provides time and one-half for all “continuous working service after regular working hours.” It is apparent that the intent is unchanged.

With regard to the Call Rule as it existed in 1924, the word “work” appeared where the word “service” now appears. Again, it is apparent that the intent is unchanged.

This Board, on March 8, 1935, in Award Number 22, decided without referee the question now before us, though the principal question concerned variance in assigned starting time. On March 20, 1935, this Board issued Interpretation No. 1 to Award 22 making it clear that employes reporting to work prior to regular starting time are entitled to payment under the Call Rule, following Decision No. 757.

In Award 4451 this Board was presented with a similar question, but faced a new rule which included the following language:

“Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates . . .”

The Board thus found that the claim should fail. In the instant case the Agreement has no such language, though the parties have had ample time since Decision No. 757 to make such changes. Language similar to that in Award 4451 appeared in the Agreement in Award 6497.

In Award 14405, when the Board denied a claim similar to the one now before us, there were circumstances which we do not face, and we therefore do not feel bound to follow that decision.

We must conclude that the weight of precedent is on the side of the Claimant; that there has been no change in the Rule or its application, according to the record before us, which could cause us to disagree with the historic decisions, interpretations and awards mentioned. We therefore uphold 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 Employes involved in this dispute are respectively Carrier and Employes 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 has been violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.