



Award No. 17217

Docket No. TE-17435

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement between the parties when, on the 4th day of July 1966, it arbitrarily and unilaterally withheld Telegrapher E. S. Jones from working his assignment of 3:00 P.M.-11:00 P.M. at New Braunfels, Texas on the pretext the position would be blanked. However, the position was worked by Agent-Telegrapher C. E. Konkel and clerical employee.

2. Carrier shall compensate Telegrapher-Clerk E. S. Jones eight (8) hours at time and one-half rate of pay in addition to the eight (8) hours he was allowed. The holiday rate of pay of two and one-half times pro rata should have been allowed for this holiday work.

3. Carrier shall compensate claimant six percent interest on all sums due and withheld as a result of this violative action.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute arose when the Carrier violated the Agreement on the 4th day of July 1966 after having declared the second shift position blanked for the holiday between 3:00 P.M. and 11:00 P.M. at New Braunfels, Texas, it required or permitted the work of the Telegrapher-Clerk E. S. Jones to be performed during his assigned hours by other employees. Claim was made for the violation and for eight hours at time and one-half rate of pay in addition to the eight hours that Claimant was allowed for the holiday at the pro rata rate. Claim was appealed to the highest officer and declined by him and is now properly before your Board for final adjudication.

(b) ISSUES

Did the Carrier violate the Agreement on July 4, 1966 when it failed and refused to permit Claimant E. S. Jones, who was ready, willing and able to perform the duties services and work required of his position between 3:00 P.M. and 11:00 P.M. at New Braunfels, Texas in handling Train

5. The dispute was progressed through all channels and the General Chairman maintained his contention that only the second shift telegrapher could hand the train orders copied by the agent-telegrapher to the crew of No. 2 at New Braunfels. In declining the claim, the Director of Labor Relations by letter dated December 1, 1966, held at follows:

"December 1, 1966

K 279-832

Mr. R. T. Phillips
General Chairman—TCU
P. O. Box 456
Palestine, Texas 75801
Dear Sir:

Reference to your letter dated October 8, 1966, file F-6-807, appealing from the decision of Telegrapher E. S. Jones, New Braunfels, Texas, for eight hours at the time and one-half rate of July 4, 1966, when it is alleged claimant should have been worked on the holiday.

Your claim is predicated on the contention that the telegrapher-clerk position was not blanked but work was performed by others. The facts are that the agent-telegrapher copied a train order during the hours of his regular assignment but remained on duty eight minutes past his regular quitting time to deliver the order. Orders for this train, No. 2, are normally handled by the agent. The clerk who works the second trick has always handled mail and baggage.

The fact that the agent-telegrapher remained on duty eight minutes beyond his regular quitting time does not support your claim for eight hours at the time and one-half predicated on your contention that claimant's position was not actually blanked. Therefore, claim is without merit or rule support and is hereby declined.

Yours truly,
/s/ O. B. Sayers

6. Conference was held on March 29, 1967, and during the conference the General Chairman persisted in his argument that the second shift position had not actually been blanked because of the train order being delivered by the agent-telegrapher. The General Chairman was reminded of Award No. 13 of Special Board No. 506 on this property holding that telegraphers did not have the exclusive right to deliver train orders notwithstanding the fact that in this dispute a telegrapher actually did deliver the train order.

OPINION OF BOARD: The issue herein is whether or not Carrier violated the Agreement when it failed to work Claimant on July 4, 1965 but instead permitted the Agent-Telegrapher to handle Train Order No. 229 to Train No. 2 within the assigned hours of Claimant's regularly assigned position and to handle mail and baggage to and from Trains Nos. 2 and 8 during said assigned hours.

Two positions existed at New Braunfels, Texas, namely, the Agent-Telegrapher position with assigned hours of 7:00 A.M. to 3:00 P.M. and the Telegrapher-Clerk's position with assigned hours of 3:00 P.M. to 11:00 P.M. The work in question occurred during the assigned hours of the telegrapher-clerk's position.

Carrier blanked Claimant's position on said holiday, but the Agent-Telegrapher performed said work during Claimant's regularly assigned hours of 3:00 P.M. to 11:00 P.M. Carrier's defense is that the Agent-Telegrapher only worked 8 minutes into the regularly assigned hours of Claimant's position. Nevertheless, the Agent-Telegrapher did perform work during Claimant's shift, and therefore the Agreement was violated.

Claimant contends that under Rule 15(2) he is entitled to be paid an additional 8 hours at time and one-half rate of pay in addition to the 8 hours Telegrapher worked in this instance more than 3 hours on the date in question, and therefore Claimant is entitled to one call or three hours at time and one-half rate of pay.

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.

A W A R D

Claim 1 is sustained.

Claim 2 is sustained in accordance with the Opinion.

Claim 3 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.