AWARD NO. 71
DOCKET NO.71
CASE: 2678

SPECIAL BOARD OF ADJUSTMENT NO.305

THE ORDER OF RAILROAD TELEGRAPHERS)
vs.)
MISSOURI-ILLINOIS RAILROAD COMPANY)

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Illinois Railroad, that Carrier shall compensate E. J. Holcomb, an extra telegrapher, for 8 hours' pay at pro rata rate for work performed as telegrapher-cashier on June 23, 1957, at Salem, Illinois.

OPINION OF BOARD:

Claim here is made on behalf of the employe filling a relief position, for the regularly assigned incumbent on his rest day, Sunday, June 23, 1957. The regular assigned employe performed three hours' service regularly on his rest day, for which he was paid at the time and one-half rate. The position filled by the claimant here is classified under the Agreement as Telegrapher-Cashier. The position involved has a six-day work week assignment, hours 5:00 P.M. to 1:00 A.M., at Salem, Illinois. The position also had a Sunday assignment on a call basis between 9:30 P.M. and 12:30 A.M.

On June 19, 1957, Carrier's Division Trainmaster notified the claimant here that the regular incumbent of the position involved would begin his vacation from June 24, 1957. In order to protect the position June 23, claimant was requested to fill the position on a call basis, and he did perform such work from 9:30 P.M. to 12:30 A.M., for which he was paid for such service at the time and one-half rate for three hours.

Claim is made for compensation for claimant for one day at the pro rata rate for eight hours, less the amount claimant was actually paid for three hours at the time and one-half rate. The Organization relies upon the provisions of Rule 8, Section 1(a-2) of the Agreement between the parties.

Carrier contends the employe was compensated under Rule 10 (d) of the effective Agreement. He was paid the same amount the regular assigned employe would have received had he performed the work, as part of his regular assignment.

A review of the record shows that claimant was assigned to the position involved here solely as a relief or extra man for one day only, June 23, 1957, nor did he continue to relieve the incumbent during his vacation beyond this date. We are of the opinion the provisions of Rule 8, Section 1 (a-2), as relied upon to support the claim, have no application here in view of the provisions of Rule 10 (d) relied upon by Carrier. We believe that claimant here is entitled only to the pay the regular employe would have earned had he performed the work of his regular assignment, and claimant is entitled only to the rights of the regular employe whose position he occupied. See Award No.4774 and Award No.5755-Third Division, National Railroad Adjustment Board.

FINDINGS: The record before us does not support a sustaining award. Carrier did not violate the Agreement as alleged.

A W A R D

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO.305
s/ Donald F. McMahon
Donald F. McMahon - Chairman

s/ DISSENTING
R.K.Anthis - Organization Member

s/ G. W. JOHNSON
G.W.Johnson, Carrier Member

St.Louis,Missouri
Nov.2,1960 (File 380-1810)

ORGANIZATION'S DISSENT TO AWARD NO. 71
OF SPECIAL BOARD OF ADJUSTMENT NO. 305

Here we have a case involving the right of the Carrier to use an extra employe for less than eight hours on a position which he had not been working and a compensation for less than eight hours, the rules calling for a basic day of eight hours (Rule 8, Section 1 (a-2)).

Sworn testimony of Carrier's witness in Emergency Board No. 106 was cited to show that the application of the Call Rule (Carrier's 10 (d), relied upon as a defense by the Carrier) with payment of less than eight hours to extra employe was improper:

> "Since an extra or unassigned employe would not have a regular work period, the rule has been interpreted as applying only to regularly assigned employes and not to extra or unassigned employes."

plus statement of Carrier counsel at same Emergency Board No. 106, that "any extra or unassigned men must be paid a minimum of eight hours' pay regardless of time worked."

Citation of a precedent established by Carrier paying a like claim was refused recognition by the Referee.

The Rule of the Agreement supports the claim and where this condition exists, resort to an Award based on equity is inexcusable. Such studied lack of recognition for important and highly relevant facts forces me to vigorously dissent to this Award.

s/ R. K. ANTHIS
R. K. Anthis - Organization Member

St. Louis, Missouri
November 2, 1960.

(Case 2678)

CONCURRING OPINION TO AWARD NO. 71
SPECIAL BOARD OF ADJUSTMENT NO. 305

The dissent filed by the Organization draws certain conclusions which are not based upon the facts in this case and for this reason are misleading and erroneous.

The regularly established position of telegrapher-clerk on the second shift at Salem, Illinois, has a work week of Monday through Saturday with a regularly assigned call on each Sunday between the hours 9:30 P.M. and 12:30 A.M. The incumbent of said position was not available and the claimant, an extra man who had finished a temporary assignment at Nashville, Illinois, on Saturday, June 22, 1957, was used in the place of the incumbent of the telegrapher-clerk position at Salem on Sunday, June 23, 1957. For the service rendered, he was compensated under the provisions of Rule 10 (d) which reads as follows:

> "OVERTIME: Rule 10.(d) NOTIFIED OR CALLED: Employes notified or called to perform work not continuous with the ending of their regular work period will be allowed a minimum of three hours for two hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

Notwithstanding the fact that Rule 10 (d) is a special rule applicable only to employes notified or called to perform work not continuous with the ending of their regular work period, the Organization has relied upon the basic day rule in support of the instant claim.

It is well settled that an extra employe taking the place of a regularly assigned employe assumes all of the conditions of the position, including duties, work location, hours of assignment, rates of pay, etc., so long as he occupies such position. This is exactly what the claimant did on date in question when he worked a regularly assigned "call."

The Employes refer to and place considerable reliance upon certain testimony before Emergency Board No. 106 in connection with Carriers' Proposal No. 4 which sought to establish a rule or amend existing rules to provide that extra or unassigned employes will be paid on a minute basis for actual time worked with a minimum of four hours. The purported testimony quoted in the dissent is not accurate nor a factual statement insofar as the rules and interpretations in agreements on this property are concerned. In this connection attention is directed to the following, taken from Carriers' brief filed with Emergency Board No. 106 in connection with Issue 27 (Carriers' Proposal No. 4):

> "It was specifically pointed out by Witness Bordwell that the proposal is not to apply where extra men actually worked a full day or <u>when they fill vacancies on regular assignments</u>. In such instances the present rules and practices would continue to govern so that extra men would receive overtime pay and <u>regular pay of the assignments</u> just as would be the case if the <u>regularly assigned employes were on the jobs</u>." (Emphasis supplied.)

(Concurring Opinion to Award No. 71)

The statement by the Organization that "Citation of a precedent established by Carrier paying a like claim was refused recognition by the Referee" is not a statement of fact. The precedent referred to and presented to the Board by the Carrier involved the use of an extra employe to perform approximately two hours of work per day which was not a part of any assignment nor a part of the duties attaching to any position. In the instant case the work performed by the claimant between the hours of 9:30 P.M. and 12:30 A.M., June 23, 1957, was a part of the regular assignment of the incumbent of the position at Salem and was regularly worked by him when not relieved. Thus, the alleged "precedent" is not applicable in the instant case.

The award was not based upon "equity" but rests squarely upon the provisions of Rule 10 (d) of the effective Agreement. An award sustaining the claim would, in fact, constitute a revision of Rule 10 (d), restricting it to "regularly assigned employes"; rather than to "employes," meaning "all employes," as now written.

This Board does not, of course, have the authority to write new rules for the parties nor to amend existing rules which have been agreed upon by the parties.

For these reasons and those set forth in the Opinion of Board, the dissent was not warranted.

/s/ G. W. Johnson
G. W. Johnson - Carrier Member.

St. Louis, Missouri
November 7, 1960