



CASE NO. 4
ORT 2141

SPECIAL BOARD OF ADJUSTMENT NO. 306

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT
OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to pay employees occupying monthly rated positions for work performed in excess of 208-1/3 hours in a calendar month.
2. Carrier be required to compensate the occupants of the monthly rated positions set forth in the Statement of Facts at the overtime rate for all work in excess of 208-1/3 hours in any calendar month commencing with the month of August, 1955."

FINDINGS:

Article 33 clearly provides that "time worked (other than on assigned rest day) in excess of 208-1/3 hours in any calendar month will be paid for at time and one-half". Practices inconsistent with the unambiguous language of a rule do not alter the rule but simply bar retroactive claims.

Carrier now asserts that it is unusual for these monthly rated agents to work eight hours on Saturday and there is no proof that they worked more than 208-1/3 hours in August 1955. No such contention was made in the handling of the claims on the property. They were simply denied on the basis of prior practice. Thus the Organization was entitled to consider that the alleged amount of time worked was admitted and it was not required to submit proof thereon in this case. Under such circumstances that contention of the Carrier comes too late for consideration herein.

The statement of claim in the submission to this Board differs from that handled on the property in claiming pay for similar months after August, 1955. On the property the claims involved only August 1955, so they will be sustained for that month only.

AWARD:

Claim sustained to the extent stated in the findings.

SPECIAL BOARD OF ADJUSTMENT NO. 306

/s/ Dudley E. Whiting
DUDLEY E. WHITING, REFEREE

/s/ Russell J. Woodman
RUSSELL J. WOODMAN, Employee Member

/s/ J. J. Gaherin
J. J. GAHERIN, Carrier Member

October 7, 1960.