

SPECIAL BOARD OF ADJUSTMENT NO. 355

Parties: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 89

STATEMENT OF CLAIM:

1. Carrier violated the Agreement between the parties when on November 6, 1956, it allowed Mr. F. H. Hite, regular assigned first trick operator clerk to the chief dispatcher, Newark, Ohio, pay for only 57 minutes instead of pay for eight hours.
2. Carrier shall compensate Operator Clerk F. H. Hite the difference between pay for 57 minutes and pay for eight hours on November 6, 1956.

FINDINGS:

Claimant F. H. Hite holds dual seniority; as a telegrapher under the ORT Agreement, and as a train dispatcher under the ATDA Agreement.

He reported for duty on his regular position at 8:00 a.m., on November 6, 1956. It subsequently developed that there was a vacancy on a second trick train dispatcher position starting at 4:00 p.m., that same day. Hite was first out on the extra dispatcher's list. Carrier says it was obligated to advise Hite of this fact, and he elected to work the train dispatcher's job starting at 4:00 p.m. Carrier says it had to then relieve him of his telegrapher position, because the Hours of Service Law would have prevented him from working the Dispatcher job if Carrier required him to complete his telegrapher assignment. He was, therefore, relieved of the latter assignment at 8:57 a.m., and subsequently paid for one hour as a telegrapher. He now asks an additional 7 hours' pay as a telegrapher, predicated his claim on this part of Article 17 (a):

"(a) Except as provided in Paragraph (b) of this Article, eight consecutive hours, exclusive of the meal hour, shall constitute a day's work xxx."

Organization also relies on this part of Article 22½:

"Regularly assigned employees shall receive one day's pay within each twenty-four (24) hours if ready for service and not used (or if used less than eight (8) hours on any position) except on assigned rest days and holidays. xxx"

Organization argues that "once the Carrier has assigned the telegrapher and allowed him to perform telegrapher's work, he cannot be removed from his position without the payment of the full basic day under the Telegraphers' Agreement.

We agree.

However, the facts here are different. This Carrier was obligated to advise claimant of his right to the dispatcher vacancy. He chose to work it. In order that he might be available under the Hours of Service Act to work the job he thus chose,

this carrier was obligated to relieve him of his telegrapher assignment at 8:57 a.m.

Claimant could have declined the dispatcher vacancy without any injury to his rights under the ATDA Agreement. He did not elect to do so, and he thus was no longer "ready for service", as required by Article 22½.

What we have here is a situation where the Carrier finds itself in double jeopardy, with no way of protecting itself when the decision rests solely with the individual employee.

There is no showing here that he was relieved of his telegrapher assignment solely for the benefit of the Carrier. A denial award is in order. Third Division Award 3869.

A W A R D

Claim denied.

/s/ Edward A. Lynch

Edward A. Lynch
Chairman

/s/ B. N. Kinhead

B. N. Kinhead
Employee Member

/s/ T. S. Woods

T. S. Woods
Carrier Member

Dated at Baltimore, Maryland,
this 20th day of February, 1962.

