

AWARD NO. 42
CASE NO. 42
BU-9758-8

SPECIAL BOARD OF ADJUSTMENT NO. 421

THE ORDER OF RAILROAD TELEGRAPHERS)

vs.)

NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT)
(Except Boston and Albany Division) and)
NEW YORK DISTRICT)



STATEMENT OF CLAIM:

1. Carrier violated the terms of the Agreement between the parties when in the week commencing Monday, July 1, 1963 it refused to pay A. J. Lica for forty (40) hours of work.

2. Carrier shall be required to pay A. J. Lica for eight (8) hours at the minimum rate on his seniority district in addition to any amounts already paid for the week commencing Monday, July 1, 1963.

OPINION OF BOARD:

At the time this dispute arose Claimant Lica was assigned to the extra list at Buffalo, New York and was subject to call for extra work on the Buffalo Division. As an extra employee his work week consisted of seven consecutive days starting with Monday. In the work week beginning Monday, July 1, 1963 Claimant Lica performed service as follows:

July 1	Available - not used
2	" " "
3	" " "
4	Tower Director SS-48
5	" " "
6	" " "
7	" " "

The claimant was paid as follows for this work week:

July 4	8 hours at pro-rata rate for holiday pay plus 8 hours at punitive ($1\frac{1}{2}$) rate
5	8 hours at pro-rata rate
6	8 hours at pro-rata rate
7	8 hours at pro-rata rate

Thus in the work week beginning Monday, July 1, the claimant was paid for 32 hours pro rata rate and 8 hours at punitive rate, or a total of 44 hours pay at pro rata rate.

Compensation for extra employees is governed by Article II, Section 4(a) of the December 10, 1962 Agreement, which declares:

"Section 4(a). Extra employees shall be guaranteed payment for forty (40) hours of work per week, except that this guarantee shall be reduced by eight (8) hours in any week for any day on which an employee does not work by reason of his failure to respond in accordance with the applicable rules of existing agreements to a call on that day for work which is not in violation of the Hours of Service Law. In computing this guarantee, when time paid for as an employee represented by the Organization, or in any other capacity in which the Carrier has the right to use him under the applicable agreement in any week commencing with Monday is less than the guaranteed hours, an additional amount of time will be paid at the minimum rate of a full time telegraph position on the seniority district involved so that the total time paid for will equal the guaranteed hours."

The Organization contends that extra employee Lica was guaranteed pay for 40 hours of work in the work week beginning July 1 and that, since he actually worked only 32 hours in that work week and was otherwise available but not used, he was due pay for an additional 8 hours. The Carrier responds that since the claimant was paid 8 hours for each day he worked on July 4, 5, 6 and 7, 1963 and was also paid 8 hours at pro rata rate for the July 4 holiday, the resulting total of 44 hours at pro rata rate was 4 hours more than required by the guarantee rule. The Organization denies that pay received by an eligible extra employee for an unworked holiday may be credited toward the guarantee. The Organization further contends that the punitive portion of Claimant Lica's earnings for working on the July 4 holiday should not be credited toward the guarantee.

Under Article II, Section 4(a), extra employees who remain available for calls are guaranteed pay for 40 hours of work time. Thus in a non-holiday week an extra employee who is called for 8 hours of work on each of only three days (or a total of 24

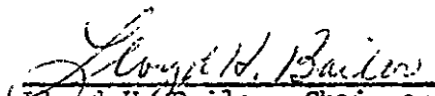
hours) is entitled to be paid for an additional 16 hours. If he works for 8 hours each on four days of a work week, and is also paid 8 hours at pro rata rate for an unworked holiday occurring on another day in the same work week, the guarantee has been met because--by definition--holiday pay is granted in lieu of work on a given day.

But in the subject instance Claimant Lica was paid for only 32 hours of time occurring on the four days of July 4, 5, 6 and 7, 1963. Because July 4 was a contract holiday and the claimant was eligible for holiday pay in addition to punitive pay for work performed on that day, he received total pay based on a multiple of $2\frac{1}{2}$ times the pro rata rate. Nevertheless the same 8 hours of time was involved on July 4 and this time cannot be converted to 16 or 20 hours for the purpose of the guarantee rule. The rule casts the guarantee in terms of number of hours of time, rather than in terms of the multiple used to compute pay for the hours.

Thus Claimant Lica was paid for only 32 hours occurring from July 4 through July 7, 1963 and under the guarantee rule he was due to be paid for an additional 8 hours. The claim will be sustained.

AWARD:

Claim sustained.


Lloyd H. Bailer, Chairman


L. Faulds, Carrier Member


R. J. Woodman, Employee Member

October 6, 1964