

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

DISPUTE.—"Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis-Southwestern Railway Company of Texas that when the position of cashier-telegrapher at Naples, Texas, was abolished on March 8, 1932, the lowest rate of pay in that office, that of the agent, should have been abolished and the rate of the cashier-telegrapher position applied to the position of agent, to which the duties of the cashier-telegrapher were transferred, in accordance with the rules of the schedule agreement, and agent compensated on that basis retroactively to the date the change was made."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Paul Samuell was called in as Referee to sit with this Division.

Prior to March 8, 1932, the station force at Naples, Texas, as covered by Telegraphers' Agreement, consisted of the following positions:

Agent, \$0.56 per hour, 8:00 a. m. to 5:00 p. m.

Cashier-Telegrapher, \$0.65 per hour, 8:00 a. m. to 4:00 p. m.

Clerk-Telegrapher, \$0.58 per hour; 4:00 p. m. to 12:00 midnight.

Effective March 8, 1932, the position of Cashier-Telegrapher was abolished and thereafter the duties of this position were assigned to the agent without adjustment in his hourly rate of pay.

Article 15-1, Telegraphers' Agreement, provides:

"In the reduction of force at an office where two or more employes are employed the lowest salary will be abolished. This rule will not require the transfer of a rate established for a cashier-telegrapher to an employee who is not required to assume the duties of cashier."

Article 13-1, Telegraphers' Agreement, provides in part as follows:

"An employe to whom the duties of cashier are assigned or withdrawn will not be disturbed, except that proper adjustments in rate of pay will be made in line with similar positions on the division."

POSITION OF PETITIONER.—The Petitioner contends that under the intent of the above quoted rules of the agreement, that the lowest rate in the office—that of the agent, should have been abolished and the rate of the cashier-telegrapher position transferred to the reclassified agent-cashier-telegrapher position.

When the cashier-telegrapher position was abolished, the carrier declined the request of the Committee to abolish the lowest rate (that of the agent position) as provided in Article 15-1, and further declined to transfer the cashier-telegrapher rate to the agent-cashier-telegrapher position, in accordance with the intent of Article 15-1, or make an adjustment in the rate of pay of the agent, to whom the duties of cashier had been transferred, in accordance with that part of Article 13-1 quoted above.

The word "salary" as used in Article 15-1 was incorporated in the rule in the revision of the agreement on January 31, 1917, at a time when all positions

covered by the agreement were listed and paid on a monthly basis. The word "salary" as then adopted related to the rates of all of the positions covered by the agreement without exception.

Effective as of October 1, 1918, by Order of the United States Railroad Administration, then operating this railroad, in Supplement No. 13 to General Order No. 27, all of these monthly rates were placed on an hourly basis, and this method of exhibiting the rates of pay for all positions covered by the agreement has been continuously in effect since that date. No change in the word "salary" as used in Article 15-1, however, was made. It was continued in the rule with the same meaning and application as when first adapted in 1917; that is, it refers to the railroad rate paid the employees for services performed for the railroad company. "Salary" and "rate" as used in this rule are synonymous terms.

Article 15-1 provides that upon the reduction in force at Naples (the abolishing of the position of cashier-telegrapher), the lowest rate in that office, not the highest, shall be abolished, which the carrier refused to do. The clear intent of the rules was disregarded.

POSITION OF CARRIER.—The Carrier shows that immediately prior to March 8, 1932, the force and rates of pay of employees represented by the Order of Railroad Telegraphers at Naples, Texas, were indicated as follows:

Pay-roll classification	Basic hourly rate of pay	Average monthly commissions 1 year prior to reduction in force
Agent.....	\$0.56	1 \$15.64
Cashier-telegrapher.....	.65	2 5.00
<div style="display: flex; justify-content: space-between; width: 100%;"> ¹ Express. ² Western Union. </div>		

Effective March 8th, 1932, the position of cashier-telegrapher was abolished and since that time the agent-telegrapher has been paid basic hourly rate of 56 cents plus Express and Western Union commissions.

(a) That under Rule 15-1 the word "salary" means the "hourly rate of pay plus express and Western Union Commissions" rather than the regularly established rate of pay.

(b) That at the time the position of cashier-telegrapher was abolished, due to a decrease of business, the duties were transferred to the agent-telegrapher, and that the lowest hourly rate of 56 cents was fixed for the agent (and not 65 cents previously received by the cashier-telegrapher) because it represented only a portion of his salary which was augmented by express and Western Union commissions.

(c) That in 1931 representatives of the employees attempted (but without success) through negotiations to change Rule 15-1 and substitute the words "rate of pay" for the word "salary", and that, therefore, such construction placed on the word by the carrier was recognized to be the construction or interpretation as now contended for by the carrier.

(d) That the carrier is willing to pay the agent-cashier-telegrapher at Naples 65 cents an hour provided the employee agrees that express and Western Union commissions will accrue to the carrier.

Thus, it is obvious that this dispute turns upon the construction placed upon the word "salary."

The rule extends back to the year 1917, when all agents were paid a monthly salary. In 1918, by order of the United States Railroad Administration, then operating this railroad, all monthly rates were placed upon an hourly basis, and all positions covered by the agreement have been on an hourly basis and in effect since that time. In fact, we now find in the present Agreement Rule 28-1, which reads: "All employees covered by this Agreement shall be paid on an hourly basis." We are, therefore, of the opinion that salaries became hourly rates of pay paid by the carrier to the employee, and it was the duty of the carrier to have raised the distinction between the words "salary" and "hourly rate of pay" at the time of the change from monthly salaries to hourly rates of pay, either by negotiation or by directing attention of the

representatives of the employees of its intention to place such construction upon the word "salary." We are not unmindful of the conduct of the employees in other cases which indicates their acquiescence to such interpretation, but in this particular case there appears to be *mitigating circumstances*. We have given due consideration to Rule 28-6 in the Agreement which provides as follows:

"28-6. When express or Western Union commissions are discontinued or created at any office, thereby reducing or increasing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions."

However, this Rule does not appear to affect the meaning of the word "salary" which, in this particular case, we hold to also mean "hourly rate of pay." The commissions referred to are not paid by the carrier and are no part of the contract between the employer and employees, except that such commissions may possibly have some bearing upon the compensation to be paid the employees depending upon the rates of pay or compensation "paid for similar positions", all of which may be subject to adjustment as provided in said Rule.

AWARD

The claim of the employees is allowed in part, that is to say, that the rate of pay of the position of agent-telegrapher or agent-cashier-telegrapher at Naples, Texas, shall be at the hourly rate of sixty-five cents, beginning as of December 1, 1935.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 4th day of November 1935.