

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE.—“Claim of the General Committee of the Order of Railroad Telegraphers, that the hourly rate of pay for 2nd telegrapher at Hugo should not have been reduced when the tour of duty of the position was changed from 4:00 P. M. to 12:00 Midnight to 12:00 Midnight to 8:00 A. M., and that the schedule rate of .70 cents per hour for this position shall be reinstated retroactively to the date it was arbitrarily reduced by the carrier.”

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 employees 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.

The case being deadlocked, Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

Prior to December 9, 1934, the carrier maintained two telegraphers at Hugo, Oklahoma, with the following assigned hours and rates of pay:

1st telegrapher, 8:00 a. m. to 4:00 p. m., rate 0.72 cents per hour.

2nd telegrapher, 4:00 p. m. to 12 midnight, rate 0.70 cents per hour.

On December 9, 1934, the carrier, by a bulletin, purported to abolish the position of second telegrapher and to create a third telegrapher at the station in question. The bulletin published the following hours of duty and rate of pay for the position of third telegrapher:

3rd telegrapher, 12 midnight to 8:00 a. m., rate, 0.68 cents per hour.

In making this change, the carrier stated in part:

“The change in positions made at Hugo December 9, 1934, was account of a change in train service on the Ardmore and Arkinda Sub-Divisions so that we no longer needed a second shift telegrapher at Hugo, Okla., but did need a third shift telegrapher.”

The carrier continued the arrangement in question at Hugo until July 3, 1935, when by bulletin it purported to abolish the position of third telegrapher and to reestablish the position of second telegrapher with the previously existing hours of duty and rate of pay.

POSITION OF EMPLOYEE.—The employee contended that the carrier did not in reality abolish the position of second telegrapher and create the position of third telegrapher—that it merely rearranged the hours of duties of the first telegrapher and the second telegrapher; and that, if it did abolish the position of second telegrapher and create the position of third telegrapher, it should have established a rate of pay of .70 an hour for the position instead of .68 an hour. In support of this position, the employee relied particularly upon Article XII (8) and (9) of the Agreement between the parties, effective May 16, 1928.

POSITION OF THE CARRIER.—The carrier contended that under Article XII (8) it had the right to abolish old positions and create new ones; that in this situation it acted in pursuance of that right; and that in the creation of the position of third telegrapher at Hugo, Oklahoma, it assigned the proper rate of pay to the position under the Agreement between the parties.

CONCLUSIONS OF THE DIVISION.—It is the conclusion of the Division that the carrier, in shifting the hours of duty at Hugo, Oklahoma, on December 9, 1934, should have assigned to the position in controversy, whether it be designated as second or third telegrapher, the rate of 70 cents, instead of 68 cents, per hour.

While for the purpose of this award, it may be conceded that the carrier, under Article XII (9) of the Agreement and subject to its limitations, had the right to abolish the position of second telegrapher and recreate the position of third telegrapher at Hugo, and that the carrier so did on December 9, 1934, this Division is of the opinion that under the Agreement between the parties the carrier should have assigned to the position in controversy, whether it be regarded as the position of second telegrapher or the position of third telegrapher, the rate of 70 cents, instead of the rate of 68 cents, per hour.

Under the construction of the facts of this dispute most favorable to it, the carrier reopened a position at Hugo, Oklahoma, which had previously existed there. Article XII (9) of the Agreement between the parties provides:

"Positions previously listed in the Wage Scale and/or covered by the Agreement, when re-opened, will be restored to the Agreement at the rate of pay then prevailing for positions of the same class on the district where located but in no case less than the rate shown in December 1, 1925, Schedule Agreement."

Under an agreement between the parties dated December 1, 1922, the carrier maintained three telegraphers at Hugo, Oklahoma, with the following rates of pay:

First, 68 $\frac{1}{4}$ cents per hour.
Second, 65 $\frac{3}{4}$ cents per hour.
Third, 65 $\frac{3}{4}$ cents per hour.

In an agreement between the parties dated March 1, 1924, the arrangement just set forth was continued. Under an agreement dated December 1, 1925, the position of third telegrapher having been abolished meantime, these rates for telegraphers for Hugo were listed:

First, 70 cents per hour.
Second, 68 cents per hour.
Third, 66 cents per hour.

In the negotiation of this agreement, however, it was understood between the parties that the rate of pay of vacant positions would not be altered except to eliminate fractions of a cent. This explains why the position of first telegrapher was increased 2 $\frac{3}{4}$ cents an hour and the position of second telegrapher increased 2 $\frac{1}{4}$ cents, while the position of third telegrapher was increased by only $\frac{3}{4}$ cents an hour. If the position had been occupied at this time, the rate of pay established for it would clearly have been 68 cents an hour.

Under an agreement dated May 16, 1928, the hourly rate of all telegraphers was increased by two (2) cents an hour. It was, however, understood, "that the wage scale shall be revised to show only such positions as are now occupied." As the position of third telegrapher at Hugo, Oklahoma, was still unoccupied at this time, the wage schedule carried no rate of pay for it.

The carrier, when on December 9, 1934, it purported to abolish the position of second telegrapher and to re-create the position of a third telegrapher, assigned to the position of third telegrapher the rate of pay appearing in the wage schedule of December 1, 1925, plus a 2 cents increase which would have been assigned to the position by the agreement of May 16, 1928, if the position had been occupied. Equitably it should have adopted as a base the rate which would have been in existence in 1925, 68 cents per hour, plus the increase awarded in 1928, two cents. The carrier in assigning a rate of pay to this position, could with as much logic and justice disregard the increase of 1928 as it disregarded the increase of pay in 1925. The establishment of 66 cents per hour in 1925 was made for the purpose of eliminating a fraction, not for the purpose of showing a difference in importance between the position of second telegrapher and third telegrapher at Hugo, Oklahoma.

AWARD

The claim is sustained to the extent that the position in controversy at Hugo, Oklahoma, whether designated as second or third telegrapher, shall retroactively be compensated for at a rate of 70 cents per hour.

By Order of Third Division.

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this Sixth day of January 1936.