

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE 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 1st towerman-telegrapher at Ashdown Tower should not have been reduced when the tour of duty of the position was changed from 9:00 a. m. to 6:00 p. m., to 4:00 p. m. to 12:00 midnight, and that the Schedule rate of 64 cents per hour for this position should be reinstated retractorily to the date it was arbitrarily reduced by the carrier. Also, that towerman-telegrapher R. A. Riley, who was forced to leave the position when it was bulletined, be reimbursed for all time lost."

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

The carrier and the employee 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.

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

FURTHER FINDINGS.—Prior to November 15, 1933, the carrier maintained these towerman-telegrapher positions, with the rates of pay indicated, at Ashdown Tower:

First telegrapher, 64 cents per hour.

Second telegrapher, 61 cents per hour.

Third telegrapher, 61 cents per hour.

The carrier, on November 15, 1933, discontinued the position of third telegrapher, and on August 5, 1934, continued the position of second telegrapher, leaving one telegrapher at the tower with assigned hours of 9:00 a. m. to 6:00 p. m., with one hour out for meals, with a rate of pay of 64 cents an hour.

On December 9, 1934, the carrier purported to abolish the position of first trick towerman-telegrapher and to create a position of second trick towerman-telegrapher, with a tour of duty from 4:00 p. m. to 12:00 Midnight without a meal period. Purporting to act in accordance with the provisions of Article XII (8) of the Agreement between the parties, effective May 16, 1928, the carrier assigned to the position a rate of pay of 61 cents an hour, the rate of pay agreed upon for a second trick towerman-telegrapher at Ashdown Tower in the wage agreement of 1928.

The carrier bulletined the position as a new position, placing an extra on it during the period of bulletin. R. A. Riley, occupant of the position of towerman-telegrapher at Ashdown Tower prior to December 9, 1934, was forced off the position during the period. The alleged new position was later assigned to Riley on his bid.

RESPECTIVE POSITIONS OF THE PARTIES.—The petitioner contended that the carrier did not abolish one position and create a new one; that, on December 9, 1934, there was only one position of towerman-telegrapher at Ashdown Tower, and that there is now only one such position; that the carrier merely changed the hours of duty of the occupant of the position which it was entitled to do without a bulletin; that Riley's removal from the position during the period of the bulletin was wrongful; and that the reduction in the rate of pay was in violation of the Agreement between the parties.

The carrier contended that it did, as it had the right to do under the Rules of the Agreement, abolish the position of first towerman-telegrapher and create the position of second trick towerman-telegrapher; and that in fixing the rate of pay for the new position it acted in accordance with the Agreement be-

tween the parties. In support of its position, the carrier cited and relied upon Article VIII, Section 2 (a) which provides:

"When vacancies occur or new positions are created, employees on the division where they occur will be notified within five (5) days by bulletin to be posted in offices, except that when vacancies occur or new positions are created in relay offices, employees on all divisions will be given notice as above provided."

In resisting the claim of R. A. Riley for time lost during the bulletining of the alleged new position, the carrier cited and relied upon Article VIII, Section 6 (a) and (b), which provides:

(a) "Employees affected by reduction in force, abolishing of positions or by the changing of a position from telegraph and/or telephone to non-telegraph and/or non-telephone, with reduction in pay and/or by changing the rate on any position to a lesser rate than the minimum provided for in Paragraphs 1, 2, 3, and 4 of Article Twelve (12), must file their application in writing for position of their choice within not to exceed fifteen (15) days after being relieved or date of reduction in rate. Their failure to do so will forfeit their displacement rights."

(b) "Such employees must not be permitted or required to work extra while waiting to place themselves, except in an extreme emergency."

CONCLUSIONS OF THE DIVISION.—In the present dispute, the position of the carrier is essentially this: When there are more than one telegrapher at a given point, whether station or tower, there is under the Rules of the Agreement between the parties a separate and distinct position for each shift worked; that each position is determined by the shift worked; and that it may, depending upon the requirements of the service, abolish a position corresponding to one shift and create a new one corresponding to another shift.

In support of this position, the carrier points out that in many cases the rate of pay assigned to the employee on the first shift is higher than that assigned to the employee working on the second shift; and that in some cases the rate of pay of the occupant of the second shift is higher than that of the occupant of the third shift.

This argument is not entirely convincing. Considering stations listed in the Telegraphers' Schedule at which there are three telegraphers, the rates of pay for all shifts are in the majority of cases the same; and in an overwhelming majority of cases the rates of pay of the second and third shifts are the same.

The fact that in many cases the rate of pay for the first shift is higher than that of the second shift does not prove that each shift is a separate and distinct position. The explanation of this situation is probably that a preferential in rate of pay has grown up and survived in favor of employees with superior seniority rights who have exercised those rights to select the first shift which is usually regarded as the most desirable shift of the day. This preferential in rate of pay, whether or not defensible, is at least natural and understandable.

The Telegraphers' Schedule, effective May 16, 1928, does not list telegrapher positions corresponding to shifts; on the contrary it lists positions of first, second, and third telegraphers. Moreover, the record indicates that on several occasions, at stations where there are less than three telegraphers, the carrier has recognized that the position of a telegrapher is the same regardless of the shift to which assigned, by changing the hours of service without bulletining the positions as new ones.

The Division concludes that in the circumstances of this dispute, the carrier acted in violation of the Rules of the Agreement between the parties in purporting to abolish the position of first towerman-telegrapher at Ashdown Tower and to create the position of second towerman-telegrapher at a lower rate of pay; and that Riley, who was forced off the position during the period of the bulletin, is entitled to reimbursement for time lost.

AWARD

The claim is sustained in its entirety.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 6th day of February 1936.