

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that in changing the rate of pay for the Agent at Gilroy, California, from a rate of \$190.00 a month to an hourly basis, the rate of .9313 an hour, should have been applied and that any incumbents of this position since December 4th, 1931, the effective date of the change, shall be reimbursed at that hourly rate."

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 employe 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.

There is in evidence an agreement dated September 1, 1927, containing as a part thereof a wage schedule effective May 1, 1927.

The wage schedule of May 1, 1927, shows the following positions and rates of pay in effect at Gilroy on the Coast Division:

	<i>Per hour</i>
Agent-----	\$0.8825
1st telegrapher-clerk-----	0.7125
2nd telegraph-clerk-----	0.7125
3rd telegraph-clerk-----	0.7125

In 1930 the management of the carrier authorized an annual appropriation of \$50,000 to be applied in adjusting inequalities in rates of pay of employees under the Telegraphers' Agreement, to become effective July 1, 1930. This appropriation was applied by negotiations between the management and Telegraphers' committee, increasing hourly and/or monthly rates of selected positions by varying amounts as evidenced by "Supplementary addenda to Telegraphers' Agreement dated September 1, 1927", on file with this Board. It appears from this supplement that no fixed rule or formula was followed in determining the increases in rates of the positions affected, but that such increases were determined by the judgment of the negotiating parties with respect to each position.

During these negotiations the position of Agent at Gilroy was changed from an hourly-rated to a monthly-rated one, and the monthly rate agreed upon was \$190. There is nothing to indicate what considerations influenced the negotiators in their determination of \$190 as the proper rate for this position, nor upon what basis it was arrived at in relation to the former hourly rate.

On December 4, 1931, the carrier abolished the position of first telegrapher-clerk at Gilroy and assigned the telegraph duties of that position to the Agent, changing his classification to that of Agent-telegrapher, and established an hourly rate of pay which it fixed at \$0.8825.

The following rules of the agreement of September 1, 1927, are cited and relied upon by the parties in support of their respective positions:

RULE 4

"BASIS OF PAY.—(a) Except as otherwise provided all employees herein specified will be paid on hourly basis."

RULE 45

"DATE EFFECTIVE AND CHANGES.—This agreement shall be effective as of September 1, 1927, and shall continue in effect until it is changed, as provided herein or under the provisions of the Railway Labor Act.

"Should either of the parties to this agreement desire to revise or modify these rules, thirty (30) days' written advance notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon."

RULE 44 (last paragraph)

"CLASSIFICATION OF POSITIONS.—Monthly rated positions are exempt from hours of service, overtime, and call rules. Positions followed by a cross are exempt from hours of service, overtime, and call rules, but agents at such stations will not be required to perform service in excess of an average of eight hours per day in any one month, which, however, does not restrict such agents from attending meetings, etc., in connection with their official duties, outside of working hours."

RULE 2

"CLASSIFICATION OF EMPLOYEES, NEW POSITIONS, ETC.—(a) Where existing pay-roll classification does not conform to Rule 1, employees performing service in the classes specified therein shall be classified in accordance therewith.

"(b) When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

"(c) Positions covered by this agreement will be filled by telegraphers taken from the telegraphers' official seniority lists.

"(d) When general, relay or dispatchers' offices are established, rates of pay for managers, wire chiefs, and telegraphers will be same as salaries paid at other general, relay, and dispatchers' offices, covered by this agreement on district located."

EMPLOYEES' POSITION.—The employees contend that the hourly rate for agent-telegrapher at Gilroy should have been fixed at \$0.9313 instead of \$0.8825; arrived at by dividing the former monthly rate of \$190 by 204, the factor set up by Director General's Supplement No. 13 to General Order No. 27, effective October 1, 1918, for conversion of monthly to hourly rates. They assert that this method has been followed in the past in negotiations between the carrier and the committee in converting hourly to monthly rates, as well as in converting monthly to hourly rates.

CARRIER'S POSITION.—The carrier contends that there is no agreed upon basis for conversion of monthly to hourly rates; that the position of agent-telegrapher at Gilroy was a new one and that Paragraph (b) of Rule 2 governed. Accordingly, it is asserted, the rate was determined by comparing the duties of the newly created position with similar positions on the Division, from which the rate of \$0.8825 was found to be proper. The carrier also asserts that the factor of 204 was not used in converting the former hourly rate to a monthly rate in 1930; that the rate of \$190 was fixed somewhat in excess of the earnings of the position under the hourly rate to compensate for the exclusion of the position from hours of service, overtime, and call rules, as provided in Rule 44.

FURTHER FINDINGS.—The evidence does not disclose that it has been the custom to record the adding of telegraph duties to an agent's position as creating a new position, nor, in the instant case, was a new position bulletined. This division does not find that there is any rule or agreed upon practice in effect for the conversion of hourly to monthly rates or vice-versa. It appears

that a change from an hourly to a monthly basis of pay has been by negotiation and that in some instances, at least, the change from monthly to hourly rates has been accomplished by the same method. It also appears that a factor of 204 was generally used in these conversions.

This division is without authority to supply a rule where the parties have neglected to negotiate one.

The evidence in this case shows that the monthly rate of the position of Agent at Gilroy was fixed by negotiation between the parties, and this division holds that the same is a proper procedure for arriving at an hourly rate under the circumstances of this case. Any changes, either in the basis of payment, or in the amount, of an agreed upon rate of pay should be by agreement. Therefore:

AWARD

This case is remanded to the parties for negotiation of a proper hourly rate of pay, on the basis of above findings.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. Johnson, *Secretary*.

Dated at Chicago, Illinois, this 15th day of April 1936.