

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE.—

"Claims of the General Committee of The Order of Railroad Telegraphers, Kansas City Southern Railway, that seven agents listed in the current wage scale of Telegraphers' Agreement at a monthly rate of pay, who were required by the carrier to suspend work on certain days during each pay roll period and suffer a corresponding deduction in salary from October 1930 to August 1934, inclusive, in violation of the said wage scale agreement, be reimbursed in the amount deducted from their agreed monthly 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 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 result of a deadlock, Willard E. Hotchkiss was called in as referee to sit with the Division as a member thereof.

An agreement bearing date of September 1, 1927, is in effect between the parties, and positions in question are shown therein at designated monthly rates of pay.

Prior to October 1930, the agents at Neosho, Missouri; Siloam Springs, Arkansas; Spiro, Oklahoma; Mena, Arkansas; Ashdown, Arkansas; De Ridder, Louisiana; and De Quincy, Louisiana, received the monthly salary as set up in the wage scale, beginning on page 16 of the Telegraphers' Agreement. Effective with the month of October 1930, and continuing to and including August 1934, the carrier arbitrarily, and without notice to the Committee, required these agents to suspend work a varying number of days during each month within this period and changed their monthly rate of pay to a daily rate by dividing their monthly rate by the number of days in the month and deducting pay for the number of days they were suspended at the daily rate thus arrived at.

Rules 1, 61, and the Terminating Clause following the Wage Scale, cover the question in dispute:

"RULE 1. This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, tower-men, levermen, tower and train directors, block operators, staffmen and such agents (agents at points named in Rule 61 excepted) as are named in the wage scale, and will supersede all previous schedules, agreements, and rulings thereon."

"RULE 61. Vacancies in agencies at Neosho, Siloam Springs, Spiro, Mena, Ashdown, DeRidder and DeQuincy will be bulletined under the provisions of Rule 36. Telegraphers assigned to these agencies will retain their seniority, but the position of agent at these stations will not be subject to any of the other provisions of these rules and working conditions."

"Terminating Clause.—This agreement shall become effective as of September 1, 1927, and shall continue in effect until terminated by thirty days' written advance notice given by either party to the other. Should either of the parties to this agreement desire to revise or modify these rates or rules, thirty days' written advance notice containing the proposed changes, shall be given and conference shall be held immediately upon the expiration of said notice unless another date is mutually agreed upon."

The employees recognize that Rule 61 provides that with the exception of Rule 36 the positions listed "will not be subject to any of the other provisions of these rules and working conditions," but they say the rule does not except them from the provisions of the wage scale. They interpret the exception to mean that the carrier, being relieved of the application of the basic day, overtime, calls, meal periods, Sunday and holiday provisions of the agreement, undertook in return to pay the monthly rate agreed upon and that therefore the carrier is not privileged under the terms of the agreement to require employees to suspend work on certain days of the month for which the monthly compensation has been established and make deductions therefrom.

The carrier contends:

- "1. That the National Railroad Adjustment Board is without jurisdiction;
- "2. That the seven positions referred to are excepted from all except certain specific rules of the telegraphers' schedule;
- "3. That no schedule rule has been violated;
- "4. That no wage scale has been changed;
- "5. That there was no discrimination practiced against these monthly rated employees in the administration of the carrier's share the work-policy."

**OPINION OF THE REFEREE.**—The Referee has given careful study to the history of this case and citations made by the parties. He is of the opinion that on the face of the record there might be a reasonable doubt whether this case is "pending and unadjusted" in the sense contemplated by the Amended Railway Labor Act. However, the Referee is not disposed to inquire into the circumstances attending the revival of the case after the file on it was closed by the United States Board of Mediation on August 23, 1932.

On the merits of the case, Rule 61 clearly exempts these positions from all the provisions of the agreement except the provisions of Rule 36.

Considering the compensation received by these agents, as set forth in the record, and all the circumstances attending the negotiations by which they were given a special status, it seems reasonable to infer that they occupy semi-managerial positions. This being true, it is equitable that they should share the burdens as well as the advantages of such positions. One of these burdens, obviously, was to participate in layoffs along with other members of the executive force and certain employees not covered by agreement.

Recognizing doubtless the inevitable precariousness of positions of this sort, it was natural that the employees in question should wish to retain seniority rights. Rule 61 enabled them to do this without putting them in a position to claim any other rights under the agreement that they would not have by virtue of being members of the regular force of employees of this Carrier.

#### AWARD

Claim denied.

By Order of Third Division.

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 17th day of September 1936.