

NATIONAL RAILROAD ADJUSTMENT BOARD  
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka, and Santa Fe Railway Company that the rate for the position of telegrapher-cashier at Victorville, California, shall be mutually fixed, retroactively to March 1, 1933, to conform with similar existing positions on the same seniority district and that any employes filling this position since that time be so compensated."

STATEMENT OF FACTS.—

"At Victorville, California, prior to March 1, 1933, there was a position classified as telegrapher-clerk and listed in the telegraphers schedule at 68¢ per hour. Also, there was in existence, a cashier position (not represented by The Order of Railroad Telegraphers) rated \$6.24 per day or 78¢ per hour. Effective March 1, 1933, the cashier position was abolished and the duties thereof transferred to the position formerly classified as telegrapher-clerk and which was on that date reclassified to telegrapher-cashier. The carrier applied the rate of 68¢ per hour to the telegrapher-cashier position."

POSITION OF EMPLOYEES.—

"The Committee contend that when the reclassification of the position was authorized by the Carrier, a new position was created so far as classification is concerned and that the rate of pay should have been fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district. The Committee agree that it was not a newly created position so far as the operation of seniority is concerned; an agreement of long standing having been reached that a change in classification does not make applicable Article 20, Paragraph (c) of the Telegraphers' Schedule, which reads in part:

"When vacancies occur, or new positions are created, they will be promptly advertised to all employes on that division and accepted within seven (7) days thereafter."

"The Committee does contend, however, that Article 2, Paragraphs (a) and (b) are applicable and fully supports its contention. Article 2, Paragraphs (a) and (b) read:

"(a) Where existing payroll classification does not conform to the scope of this schedule, 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."

"The agreed upon wage scale of The Telegraphers' Schedule covering the Los Angeles Division (Victorville being located thereon), shows some 15 or 16 telegrapher-cashier positions with hourly rates ranging from 66¢ to 78¢ per hour, according to the location, work, and responsibility of the position. On the same Division, telegrapher-clerk positions carry hourly rates ranging from 66¢ to 71¢ per hour according to location, work,

and responsibility of the position and at no one station where the two differently classified positions (telegrapher-cashier and telegrapher-clerk) are in existence are the rates the same. The telegrapher-cashier position being the higher of the two.

"The rates in effect and as listed in the wage appendix are the result of negotiations between the Carrier and the Organization, therefore, it is evident the Carrier agreed the telegrapher-cashier positions to be of a higher class and necessarily the higher rate should apply when a position is so classified. The Committee claim that Article 2, Paragraphs (a) and (b) are controlling and that when the positions were reclassified the rate of comparable telegrapher-cashier positions should have been applied."

#### POSITION OF CARRIER.—

"The schedule involved is 'Telegraphers' Schedule, effective February 5, 1924, rates revised as of April 1, 1925.' Article 5-(h) of the schedule reads:

"The same line of procedure as that followed in the handling of discipline cases will be followed in handling other grievances arising in connection with the application of this schedule."

"Article 5-(i) of the schedule reads:

"Any grievances to be considered must be presented within thirty (30) days of date alleged to have occurred."

"Article 5-(i) appeared first in the schedule of rules and regulations agreed upon by the Carrier and its employees represented by The Order of Railroad Telegraphers, effective March 16, 1922, following the issuance of Decision 757 of the United States Railroad Labor Board, effective March 16, 1922.

\* \* \* \*

"Granting that a grievance existed, the date that it is alleged to have occurred is March 1, 1933. It was not presented to the Management by the Organization for consideration until February 21, 1934, in letter of General Chairman C. Green to Mr. C. E. Hill, Assistant to General Manager, some 11 months, 21 days after March 1, 1933, or 356 days after it occurred and 326 days beyond the 30 days' limit within which it should have been presented to be entitled to consideration. Copy of Mr. Green's letter to Mr. Hill of February 21, 1934, is attached, marked Exhibit No. 1.

"The claim is outlawed by reason of non-compliance with the requirements of Article 5-(i) of the schedule, quoted above. It cannot be gained that Article 5-(i) of the Telegraphers' schedule is equally as binding upon the parties to the schedule as any and all other articles therein.

\* \* \* \*

"Further, apropos of the claim of The Order of Railroad Telegraphers as set forth under the heading 'Dispute' in its ex parte submission to the Board in this docket, the Carrier cites the Board to its letter above referred to addressed to the Board's Secretary and again submits that the Organization's request that a rate be mutually fixed by the Board is a request that the Board exceed its jurisdiction under the Railway Labor Act amended approved June 21, 1934, and enlarge upon the schedule interpretation laid down by the United States Railroad Labor Board in its Decision No. 3789, herein above referred to."

**OPINION OF BOARD.**—The Carrier contends "the claim is outlawed by reason of non-compliance with the requirements of Article 5 (i) of the schedule quoted above."

We agree with the Carrier that there is insufficient evidence showing that the claim was presented within thirty (30) days of March 1, 1933. The testimony and evidence set forth by the employees in our opinion is insufficient to establish the contrary.

However, despite this conclusion, we believe that the Carrier cannot escape its liability under the Agreement merely because the claim was not first made within thirty (30) days after March 1, 1933.

It is our opinion that Article 5 (i) of the Agreement has been sufficiently complied with.

Article 5 (i) cannot be held to cut off the claim of the employee for the grievance here involved was a continuing and recurring one. The employee

continued to receive the lower rate of pay each pay until February 21, 1934, the date on which both sides concede that the complaint was made. It is our view that the Carrier was just as liable for paying the lower rate of pay on February 20, 1934, as it was for doing so on March 1, 1933. Each day makes for a separate grievance.

The employee's claim for back-pay, however, cannot under this rule logically extend for more than thirty (30) days prior to the date on which complaint was first made, February 21, 1934. Obviously, if the grievance is held to be recurring and a continuing one on the basis that there is a separate violation on each day any and all violations committed before thirty (30) days prior from the time the complaint is first made are outlawed under Article 5 (i).

We further conclude that Article 2 (b) of the Agreement is controlling in this case since it was shown that with the abolishment of the position of cashier, the duties thereof were transferred to the position formerly classified as telegrapher-clerk, which position was thereupon reclassified to telegrapher-cashier. The compensation of the reclassified position should have been fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district which was not done. The rate should now be fixed retroactively to thirty (30) days prior to February 21, 1934, and the employees involved should be compensated accordingly.

**FINDINGS.**—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That in accord with provisions of Article 2, paragraph (b) of the current Agreement claim of the Employees should be sustained to the extent indicated in the Opinion of the Board.

#### AWARD

Claim sustained in accordance with above findings and opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 22nd day of April, 1937.

#### DISSENT ON DOCKET TT-386

This claim should have been denied because of non-compliance by the employees with the following provisions of the agreement:

Article 5 (h):

"The same line of procedure as that followed in the handling of discipline cases will be followed in handling other grievances arising in connection with the application of this schedule."

Article 5 (i):

"Any grievances to be considered must be presented within thirty (30) days of date alleged to have occurred."

It is undisputed in the record that the change in the position of telegrapher-clerk to telegrapher-cashier took place on March 1, 1933, and that no claim was presented until February 21, 1934. The rules above quoted clearly established estoppel against the presentation of claim after the expiration of 30 days from the time the change took place on March 1, 1933. The written rules are merely an expression of the agreement reached between the parties, and such agreements must be construed and interpreted so as to give effect to the intention of the parties to the agreements.

It is clear, from the language of the above rules, that it was the intent of the parties to create an estoppel against the presentation of any claim which was not presented within 30 days of its first occurrence, and if not so presented, would not thereafter be subject to determination under the agreement.

It should not be overlooked that representatives of the employees and of the management drew the terms of this agreement with a common understanding of occurrences which created grievances. The change in position at Victorville, if objectionable to the employees, constituted such an occurrence, and gave cause for a grievance under the agreement on the date that the change took place. It was to such a grievance and such a date that Article 5 (i) of the agreement referred.

It is the view of the undersigned that the interpretation placed upon these rules by the referee is contrary to their plain language, intent and purpose.

A. H. JONES.

J. G. TORIAN.

R. H. ALLISON.

GEO. H. DUGAN.

C. C. COOK.