

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
KANSAS CITY TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Kansas City Terminal Railway; that C. A. Lunsford be reinstated to his regularly assigned position, Second Trick Chief Operator at Kansas City, Missouri, from which position he was unjustly removed through demotion by the Carrier on May 27th, 1936, and; that he be compensated retroactively to that date for any wage loss suffered thereby."

STATEMENT OF FACTS.—The General Committee states:

"C. A. Lunsford was employed by the Kansas City Terminal Railway Company as telegrapher on September 6, 1915. He worked in that capacity until September 1931, at which time he bid on and was assigned to a position designated as Second Trick Chief Operator in the Kansas City telegraph office.

"He held the position of Second Trick Chief Operator from September 1931 to May 27, 1936, a period of nearly 6 years, and during this period was not disciplined or reprimanded until a new Manager took charge of the office on January 1, 1936, and until the working force in the office had been reduced, and all overtime cut off.

"Mr. G. A. Parr was made Manager on January 1, 1936. The force in the office was reduced by eight man hours per day (24 hour period) on January 21, 1936. The man hour reduction on each of the three eight hour shifts, first, second, and third, was as follows: First shift, one hour; second shift, six hours; third shift, one hour.

"After Mr. Parr was made Manager and the force on the second shift was reduced six man hours, Mr. Lunsford, second trick chief operator, was criticized by Mr. Parr, the new manager, who found fault with his work on the grounds that he was not handling enough numbers, and threatened to remove him from second trick chief operator position. On May 27, 1936, Mr. Parr, the Manager, did remove Lunsford from second trick chief operator position and placed him on a straight telegraph job.

"The second trick chief operator job pays \$202.30 per month, whereas the straight telegraph job Lunsford was forced to take pays 76¢ per hour, eight hours per day, calendar day month. At this hourly rate his earnings for a weighted average month would be: \$184.93, loss \$17.37, on an average month basis. This monetary loss was caused by his having been removed from second trick chief operator position and placed on a straight telegraph position."

An agreement between the parties bearing effective date of August 1, 1924 (Wage Scale revised effective May 16, 1929), was placed in evidence.

CARRIER'S STATEMENT OF FACTS.—

"The Union Station Office of the Kansas City Terminal is the only telegraph office operated by the Kansas City Terminal, with the exception of certain incidental telegraphing at one of its interlocking towers.

"The force now consists of a Manager of the Telegraph and Telephone Department, who, in addition to duties incidental to managing the department, supervises the operation of the office on the first trick. These super-

"We contend Lunsford is a qualified and capable telegrapher and also a qualified and capable chief operator, notwithstanding any statement or claim of the management to the contrary. The responsibility for any unsatisfactory work performance, if it actually existed, rests with the management and not Lunsford for the reason he called the condition to the attention of the management and asked them to visit the office during his shift and personally investigate the conditions in the hope when brought to the attention of the Management it would be remedied. In this he was mistaken. Officers when requested would not make a personal survey. When Lunsford called Manager Parr's attention to delays because of the condition he was told he (Parr) would do the talking. He was also told by Mr. Parr to not make any more written reports of delays and the cause thereof. Mr. Parr did not visit the office during the second shift so as to determine the actual conditions that existed or make any effort to remedy it. However, he contributed to it by reducing the force on second trick and by chopping off all overtime. This was the extent of Mr. Parr's efforts to solve the problem and remedy the conditions and difficulty that faced Lunsford, and with which he was struggling to overcome."

POSITION OF CARRIER.—In support of its position the Carrier stated:

"It is the contention of the management that Chief Operators are not subject to the Agreement, and are not and were never intended to be included within the scope thereof.

"The assertion in the Organization's Statement of Position, that when Mr. Lunsford was given this position it was advertised and assigned to him, is in error. Mr. Lunsford was assigned to the position of Chief Operator and not placed thereon through bulletin procedure.

"However, as set out in our letter of July 1, 1936 (Copy of which is attached and marked 'Exhibit C'), we advised the Organization that if Mr. Lunsford felt he was unjustly dealt with, we had no objection to giving him a hearing to present his case to the Manager of the Telegraph Office. This was done, and the Management felt that nothing new developed and found no basis in the testimony presented to give Mr. Lunsford any consideration for reinstatement. The Management discussed this case on appeal up to and including the President of the Company, not only with the Local Committee but with Vice President V. O. Gardner of The Order of Railroad Telegraphers, reiterating the statement that this position is not covered by the Agreement with the Organization and that the appointment, retention, or removal of an individual in this position is entirely the prerogative of the Management, subject to his ability and willingness to satisfactorily perform the duties assigned to it.

"Notwithstanding our position that the Organization has no jurisdiction over the job, the Management feels that it had just and sufficient reasons for relieving Mr. Lunsford from the position of Chief Operator, and respectfully requests the Board to deny the Organization's claim."

OPINION OF BOARD.—Two questions are involved in this dispute, namely, (1) whether or not the position of the second trick chief operator comes under all the provisions of the Agreement between the Kansas City Terminal Railway Company and the Order of Railroad Telegraphers, and, (2) whether the Carrier was justified in demoting Mr. C. A. Lunsford on May 27, 1936, from his position as second trick chief operator to a position as operator.

Considering the first question: A letter dated November 11, 1936, was submitted by the Carrier from F. E. Hancock, who stated that in July 1924 he was General Chairman of the Order of Railroad Telegraphers, when a working arrangement, effective August 1, 1924, was made with the Kansas City Terminal Railway Company, in which it was agreed that the three positions of chief operator be eliminated from the Agreement. Notwithstanding this letter, which was written nearly six months after Lunsford's demotion had become effective, the Board submits its opinion for the purpose of this claim, that inasmuch as the major duties of Mr. Lunsford consisted of telegraphing, his position as second trick chief operator was not a separate assignment or class from the employees represented in the Agreement of the Management with the Telegraphers, and therefore, for the purpose of this claim, should be included in the Schedule governing employees in telegraph service.

Of the second question: As to whether the Carrier was justified in demoting Mr. Lunsford, your Referee concurs in the opinion expressed by a former referee in Award 71 of the Third Division of this Board, in which he stated:

"So long as the carrier management acts in good faith and without ulterior motives, and does not abuse the right and privileges of the employees under the contracts and rules and regulations existing between the employer and employee, this Board is without the right to interfere in the action of the employer in disciplining its employees."

Of the testimony submitted in this case, were the Board to solely consider that presented for the period following the appointment of a new manager on January 1, 1936, up to the demotion of Mr. Lunsford on May 27, 1936, some question might well be raised as to whether personal prejudice and ulterior motives had not been the basis for the action taken. Considering, however, the testimony as a whole and viewing developments from January 1, 1936, up to the date of Mr. Lunsford's demotion on May 27, 1936, in the light of incidents, records, and testimony presented for the previous period, from the time of Mr. Lunsford's appointment as second trick chief operator up to January 1, 1936, the Board finds no basis for any attempt to interfere in the action of the Carrier in demoting Mr. Lunsford.

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 employe involved in this dispute are, respectively, carrier and employe 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 there is no basis for disturbing the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 7th day of May, 1937.