

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railways that: The position of Agent-Telegrapher, Whiting, Kansas, rate sixty-three cents (63c) per hour, arbitrarily reclassified by the Carrier to non-telegraph agency, rate forty-eight cents (48c) per hour, be restored to original schedule classification and rate of pay, and that the employee affected be reimbursed retroactively for any loss sustained by the arbitrary reclassification."

JOINT STATEMENT OF FACTS: "Effective November first, 1936, the Chicago, Rock Island and Pacific Railway Company reclassified agent-telegraph job at Whiting, Kansas, which is shown in the 'Telegraphers' Contract with the Carrier at sixty-three cents (63c) per hour, to that of non-telegraph agency at a rate of forty-eight cents (48c) per hour."

POSITION OF EMPLOYEES: "For many years certain station, tower and telegraph employes on this railway have had a working agreement with the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railway Company, the scope rule of which reads:

"The following rules and rates of pay will govern the employment of telegraphers, telephone operators (except switch-board operators), agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators and staff men employed upon the lines of these railways as shown in this schedule and are herein referred to as telegraphers."

"In the schedule of rates of pay of the current contract, a copy of which is attached hereto as exhibit 'A,' under the caption 'Kansas Division' on page 37, you will find the station, Whiting, Kansas, agent-telegrapher listed at sixty-three (63) cents per hour. And on page 42 under the caption 'Pan Handle Division' Enid and Anadarko Line, you will note Greenfield, Oklahoma, agent-telegrapher rate sixty (60) cents per hour.

"These two stations are on different divisions, but we present them both in this single appeal in order to save the time of this Honorable Board, as well as to lessen our work a trifle.

'The foregoing rules and rates of pay constitute, in their entirety, the agreement between these railways and their telegraphers. No departure from them shall be made by any of the parties hereto, except after thirty (30) days' notice of such desire, in writing has been served on the other party hereto.'

"Therefore, it is the contention of the Telegraphers' Committee that this Board should order the Carrier to place these jobs in the former status and reimburse the incumbents thereof for all monetary loss on account of the reduction of their wages from November 1, 1936."

POSITION OF CARRIER: "Article 2 (a) of the current agreement with the telegraphers' organization, effective January 1, 1928, reads:

'New Positions—Compensation. 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.'

"On October 31, 1936, position of agent-telegrapher at Whiting, Kansas, rate 63c per hour, was abolished. Effective November 1, 1936, a non-telegraph agency was established at that point. The current telegraphers' agreement (Article 22 (a) and the wage scale in back of schedule) specifies a 48c rate for non-telegraph agencies. Whiting, as a non-telegraph agency, is of the same class and character and its agent performs the same duties and has the same responsibilities as required of other non-telegraph agents. In accordance with the provisions of Article 2 (a) quoted above, a rate for the non-telegraph agency at Whiting, Kansas, was established at 48c per hour, this being in conformity with rates paid on existing positions of similar work and responsibility.

"This was not, as alleged by the employees, an arbitrary reclassification of a position. The position of agent-telegrapher at Whiting, Kansas, was abolished. A new position of non-telegraph agent was created. When the rate of 63c per hour was established, it was to compensate the agent at that point for telegraphing in addition to the other duties ordinarily required of an agent, and that rate was established on the basis of the rate paid at comparable points. When the particular feature—telegraphing—which warranted establishment of the 63c rate was discontinued and all instruments and appliances removed from the station and the agent no longer required to have a knowledge of telegraphing or do any telegraphing, it was entirely proper to consider that a new non-telegraph agency was established and pay the rate paid similar positions under the provisions of Article 2 (a) of the schedule. There is no restriction in the telegraphers' agreement that a position once established can not be abolished nor is there any provision against establishing new positions, and the contract does provide a method to be followed in rating such new positions."

"Whiting is located on a branch line with limited train service. With the small amount of business handled at that point and the amount of train service requiring no telegraphing, maintenance of the 63c rate for the agent at that point would constitute an unwarranted and uneconomical expenditure.

"The telegraphers' agreement in Article 22, and in the wage scale, provides for classification of non-telegraph agents at small non-telegraph stations with rate of pay of 48c per hour and assignment of a non-telegraph agent at the small station of Whiting is therefore in accordance with the schedule, and we are not establishing a less favorable working condition or rate of pay than is authorized by the agreement. The station could just as well be closed entirely, but by maintaining it as a small non-telegraph agency it provides employment for an additional agent and places him in a position to accommodate the public and so serve them that when conditions justify on basis of their returning patronage, the higher rated position of agent-telegrapher can be restored."

OPINION OF BOARD: This claim of the General Committee of the Order of Railroad Telegraphers is for the restoration of position of agent-

telegrapher at Whiting, Kansas, said to have been arbitrarily reclassified by the carrier on November 1, 1936, to a non-telegraph agency and changed from a rate of 63 cents per hour to 48 cents per hour without negotiation between the parties.

The claim is of the same character as that covered by Docket TE-544 of this Third Division of the National Railroad Adjustment Board, and is presented in conjunction with that docket in which several awards and decisions are submitted as having a bearing on the claim at issue, and with the understanding of the parties that, while the stations involved are on different divisions of the carrier, the conditions of the claim in Docket TE-544 are identical with the conditions on which this claim is based.

In the rulings made in the awards and decisions submitted in those dockets as having a bearing on this claim, the Board reaffirms its previous rulings to the effect that where rules, positions or rates that have been negotiated into an agreement are changed, the carrier is equally obligated in following the same orderly process of conference and negotiation as when the agreement was originally negotiated.

In the present claim however the conditions with respect to negotiation are reversed, and when in the opinion of the carrier it became necessary to abolish the position of agent-telegrapher at Whiting, Kansas, because of unfavorable economic conditions at the station, and to remove the telegraph work from the station and establish a non-telegraph agency at a lower rate of pay, the carrier presented the matter of change to the authorized representative of the employees, but was unable to secure the consent of the General Committee to the change that the carrier put into effect some months later without negotiation.

In support of its action in changing the positions and rate of pay of the agency at Whiting, Kansas, the carrier submitted statements showing the reduced earnings of the station due to drought and other conditions, and cited these as a basis for abolishing the position of agent-telegrapher, removing all telegraph instruments and service from the station, and establishing a non-telegraph agency at Whiting.

In the statement of the General Committee that the carrier arbitrarily reclassified the agency and that the change was made through the unilateral action of the carrier, the facts are evidenced that the General Committee, while agreeing with the carrier that the business and earnings of the station had been seriously reduced through drought and other conditions which had continued over a period of two or three years, declined to concur with the carrier in reclassifying the agency and continued to urge that no change be made with the expressed hope that with a return of normal seasons the income of the station might be expected to increase.

In support of its action in declining to concur in reclassifying the station in dispute, the General Committee contends that the telegraphing at Whiting had always been a negligible part of the agent's duties and responsibilities and that the agency and the agent's duties continued in almost the same volume after as before the change; while the carrier in determining the rate applicable to the new position alleged to have been arbitrarily created, had based such rate upon the rates existing at stations not comparable with Whiting.

In view of the conditions outlined and the conflicting statements made with respect to the conditions existing as they pertain to the change which the carrier put into effect on November 1, 1936, the Board is unable to determine the issues of this claim from the facts presented and rules that the claim be remanded to the parties to adjust their differences by proper conference and negotiations, or, failing in this, to resubmit their differences to the Board with a record of the facts brought out in such conference and negotiation.

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 the facts of record are not sufficient to determine the points at issue and the claim is remanded for proper conference and negotiation between the parties.

AWARD

Claim remanded for conference and negotiation in accordance with the last paragraph of the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 19th day of October, 1937.