

Award No. 556
Docket No. TE-526

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the position of agent-telegrapher at Kirkland, Arizona, covered by the telegraphers' agreement and listed in the wage scale at an agreed rate of 77 cents per hour, not having been abolished in fact, shall be restored to the telegraphers' agreement and the position filled in accordance with the governing rules of said agreement."

STATEMENT OF FACTS: In their ex parte statement the General Committee submitted the facts as follows:

"An agreement bearing date February 5, 1924, as to rules, and January 1, 1928, as to rates, is in effect between the parties to the dispute.

"The position of agent-telegrapher Kirkland, Arizona, is covered by said agreement and at the rate of 77 cents per hour.

"Effective July 27, 1932, the carrier declared the position abolished and required the agent-telegrapher at Skull Valley to also assume the duties and work of the position of agent-telegrapher at Kirkland without consent or agreement by the committee.

"The Kirkland station is 6.2 miles distant from the Skull Valley station. Under the new arrangement by the carrier the Skull Valley agent-telegrapher reports for duty on week-days at Skull Valley at 6:15 A. M., attends the first passenger train due 6:41 A. M. then proceeds to Kirkland and works there as agent-telegrapher for approximately four and one-half hours, after which he returns to Skull Valley station where he concludes his eight hour tour of duty. The carrier furnishes a motor track car as a means of transportation between the stations.

"Separate station accounts are maintained for the agency positions at Kirkland and at Skull Valley, the same as before July 27, 1932.

"The agent-telegrapher position at Kirkland is not in fact abolished."

The Carrier stated the facts as follows:

"On July 27, 1932, position of agent-telegrapher at Kirkland, Arizona, rate 77¢ per hour, was abolished in reduction of force, and the assignment of the agent-telegrapher at Skull Valley, Arizona, rate 72¢ per hour, extended to include that point, the rate of pay being established at 77¢ per hour."

POSITION OF EMPLOYEES: "The prevailing telegraphers' agreement contains the following governing rules which are invoked in this dispute:

action taken was in conformity with the rules of the schedule, viz., Article XX-(k), which provides that in case of reduction of force or when a position is abolished, the regularly assigned employe affected will be permitted to displace the junior regularly assigned employe of his class or take his place on the extra list. The force was reduced at Kirkland."

OPINION OF BOARD: In support of this claim the General Committee of the Order of Railroad Telegraphers submit that effective July 27, 1932, the Carrier, without conference and agreement with the Committee, declared the position of agent-telegrapher at Kirkland, Arizona, abolished, and thereafter required the agent-telegrapher at Skull Valley, Arizona, a point 6.2 miles distant, to assume the duties and responsibilities of the position of agent-telegrapher at Kirkland in addition to that at Skull Valley.

In support of their contention that the action of the Carrier was in violation of the Agreement the parties the General Committee submits various rules of the existing agreement between the parties, effective February 5, 1924, and supplementary agreement as to rates, effective January 1, 1928, together with various awards and dockets of this Third Division of the National Railroad Adjustment Board.

The Carrier represents that the action taken was a reduction in force at Kirkland and cite Article XX-(k) of the Agreement between the parties, together with United States Railroad Labor Board Decision 2194, dated March 6, 1924, in support of their contention that the action taken was not in violation of the provisions of the agreement.

The facts in evidence are that on July 27, 1932, the position of agent-telegrapher at Kirkland, rate 77 cents per hour, was abolished by the Carrier and the assignment of the agent at Skull Valley, who, prior to July 27, 1932, received a rate of 72 cents per hour was extended to include the Kirkland Agency at a rate of 77 cents per hour.

In the change effected by the Carrier the agent-telegrapher at Skull Valley divided his time between the two stations, which as stated are 6.2 miles apart, maintained separate station accounts for each agency, and used a motor track car furnished by the Carrier as a means of transportation between the two stations.

With respect to U. S. Railroad Labor Board Decision No. 2194 submitted by the Carrier as having a bearing on the subject at issue in this claim, the Board calls attention to the fact that the case on which Decision 2194 was rendered covered a condition which took place on March 14, 1921, and was undoubtedly determined by the rules and conditions in effect at the time. Since that time the Telegraphers' Schedule, on whose rules and conditions this claim is based, was adopted on February 5, 1924, and the rates revised as of April 1, 1925, and on January 1, 1928, and while there is some similarity in the two cases there are some differences and changes, both in the rates and conditions, and the Board submits that the conditions covered by this instant case are not to be determined by the action taken under the varying conditions existing at other points, but in this case, as in the case or cases cited, by the rules in effect on the line of the Carrier affected.

In connection with Article XX, paragraph (k), the Board cannot agree with the interpretation of this rule as stated and applied by the Carrier. It is true there was a reduction made in the force, and the position of the agent-telegrapher was abolished by action of the Carrier, but the Board submits that the agency force was not reduced in the sense that the term is used in the rule, and the position was not abolished in fact, as the work continued to exist. The fact is that the agent-telegrapher at Kirkland was displaced and replaced by another, while had the station been abolished in fact another agent-telegrapher could not have been assigned to carry on the duties of the station and to maintain the station accounts under the same conditions as handled by his predecessor.

Undoubtedly the plan adopted by the Carrier was induced by proper motives of economy but as stated by a previous Referee of this Division "since its execution infringed upon the terms of the agreement with its employes the method of negotiation rather than that of ex parte action should have been followed."

In the several submissions which have been presented in this claim the fact is evidenced that while the work at both Kirkland and Skull Valley had probably diminished, much if not all of the same class of work formerly performed continued to be done, and many of the requirements for an agent-telegrapher, as originally negotiated into the agreement, continued to exist at both stations.

It is not the opinion of the Board that all of the work for which an agency is created must disappear before an agency can be abolished; it is however the opinion of the Division that when the Carrier seeks, because of economic or other conditions, to combine or double-up agencies, such action should only be taken by following the same practice as was evidenced when the agreement was negotiated.

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 employes involved in this dispute are respectively carrier and employes 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 displacement of the agent-telegrapher at Kirkland from his regular assigned position constituted a violation of the terms and spirit of the existing agreements between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1937.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 556,
DOCKET No. TE-526**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: The Atchison, Topeka & Santa Fe Railway

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the original disposition of this claim, and as outlined in the Award specified, the Board sustained the claim of the General Committee on the basis that the result of such action by the Board was to restore those conditions which were violated by the Carrier, and which were sought to be adjusted through the presentation of the claim upon which the Award was based.

In view of this, it is the ruling of the Board that the only proper meaning and intent that can be placed upon Award No. 556, as defined in the opinion of the Board and the findings thereof, is that the position of Agent-Telegrapher at Kirkland, Arizona, covered by the Telegraphers' Agreement and listed in the wage scale at an agreed upon rate of 77 cents per hour, shall be restored to the Telegraphers' Agreement and the position filled and the rate applied in accordance with the wage scale and governing rules of said agreement, until such time as action is taken to reclassify the position in dispute in accordance with the requirements of the agreement existing between the parties.

Referee Arthur M. Millard, who sat with the Division, as a member, when Award No. 556 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1938.