

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (WESTERN LINES)**

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that (a) the carrier violated the Telegraphers' Agreement when on June 1, 1937, the agreed upon rate of pay for the Odell agency (68¢ per hour) was arbitrarily reduced to 51¢ per hour, and (b) the 68¢ per hour rate be restored as of June 1, 1937."

JOINT STATEMENT OF FACTS: The parties jointly certified to the following Statement of Facts:

"The Telegraphers' Schedule lists a position agent-telegrapher, Odell, Texas, rate 68¢ per hour. Effective June 1, 1937, the Carrier reclassified the position of agent-telegrapher to small non-telegraph agent and reduced the rate of pay from 68¢ per hour to 51¢ per hour without agreement with the Committee."

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

POSITION OF EMPLOYES: "May 4, 1937, General Manager, Mr. H. B. Lautz, under his file B-11050 notified General Chairman, Mr. J. L. Elliott, as follows:

"This is to advise that effective June 1, 1937, Odell, Texas, now a telegraph agency, will be reclassified to a small non-telegraph agency, rated at 51¢ per hour."

to which a formal protest was made.

"The Telegraphers' Schedule reads in part:

"The following schedule of rules and regulations is hereby agreed upon by the Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle & Santa Fe Railway Company, and its employees represented by The Order of Railroad Telegraphers.

"Scope: This schedule will govern the employment and compensation of, Telegraphers, Telephone Operators (except switch board operators) agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen and such agents and other employees as may be shown in the appended wage scale."

hour was agreed to, but to the contrary, information on the telegraph service performed at that time shows that it constituted a substantial portion of the agent's duties.

"We contend that the agent's position at Odell is non-telegraph in fact, and that in reclassifying we have complied with the specified requirements and met the fundamentals prescribed by the Santa Fe Telegraphers' Adjustment Board, and further that the present classification and rate of pay is proper and the claim of the employees should be denied."

OPINION OF BOARD: As shown by the Joint Statement of Facts the agency position at Odell, Texas, was reclassified from that of Agent-telegrapher, rate 68 cents per hour, to small non-telegraph agent, rate 51 cents per hour, by the carrier without agreement with the Committee. This is claimed by the organization to be a violation of the Scope Rule and Article 23 of the agreement and of the Amended Railway Labor Act, Section 2 (4), Section 2 Seventh and Section 6.

The argument that what occurred constituted a violation of the Railway Labor Act is based upon the assertion that there was a reduction in the rate of pay at this station, without agreement, and that this violates Section 2 Seventh of the Act. If this reclassification could be said to be a change in the rate of pay it would not be such as is prohibited by Section 2 Seventh of the Act which relates to changes in rates of "a class" of employees—not individual rates—except accomplished pursuant to the agreements in force or the processes of mediation prescribed by Section 6 of the Act. The Act therefore was not violated.

Referring then to the agreement: There is no prohibition therein against changing a position from agent-telegrapher to small non-telegraph without a conference and agreement with the Committee.

The change must of course be one in fact in order to warrant the reclassification. The discontinuance of the telegraph does not necessarily and automatically call for a classification of small non-telegraph. The position might still be of sufficient importance to call for a higher classification. This can present a question of fact which the organization is entitled to raise in the usual manner and failing adjustment to bring to this Board.

This identical question has been up twice before. It was involved in Decision 4101 of the United States Railroad Labor Board where the contention here made that the action of the carrier in making a reclassification without conference and agreement was expressly overruled. The other case was before the Santa Fe System Board of Adjustment and resulted in Decision No. 8, which also overruled the contention that reclassification could be made only pursuant to conference and agreement. Both these decisions were upon the present agreement.

A subordinate question is involved in this case as was the situation in both those cases, i. e., whether the reclassification made was correct, that is whether (a) the classification to small non-telegraph was proper (b) even if so whether the 51 cent rate was the correct rate to apply. It should be understood there is nothing in the agreement that establishes a rate of 51 cents as uniformly applicable to small non-telegraph positions; that is the minimum rate and applies to most all those positions but there are other rates of 56¢ and 65¼ cents applicable to such positions.

This subordinate aspect of the case was not developed sufficiently to enable the Board to pass judgment on it and in this respect the case should be remanded for joint check by the parties with the right to bring it back to the Board failing agreement.

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 reclassification without conference and agreement was not of itself a violation of the agreement or the Amended Railway Labor Act, but that whether a proper reclassification was made is insufficiently developed and in that aspect the case is remanded.

AWARD

Remanded in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of May, 1938.