

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company, Pacific Lines, that effective December 4th, 1931, the occupant of the position of agent-telegrapher at Gilroy is entitled to additional compensation over and above the monthly rate of \$190.00 for Sunday and Holiday service performed, based upon the pro rata daily rate of each calendar month, using the working days of each calendar month in arriving at such pro rata daily rate."

EMPLOYEES' STATEMENT OF FACTS: "Effective July 1st, 1930, the representative of the Carrier and the Representative of the Organization, parties to this dispute, fixed the rate of pay for the position of agent at Gilroy, Coast Division, at \$190.00 per month.

"Effective December 4th, 1931, the Carrier, without conference and agreement with the Representatives of the Organization, abandoned the agreed upon monthly rate of \$190.00 per month for this position and arbitrarily set a rate of .8825 per hour for the position."

There is in evidence an agreement between the parties bearing effective date of September 1, 1927, as to rules and May 1, 1927, as to wage scale.

POSITION OF EMPLOYEES: "The Carrier is in violation of the agreement (Rule 45) and in violation of the Railway Labor Act in making this change in rate and method of pay. (See Award TE-237, National Railroad Adjustment Board, Third Division, under caption 'Further Finding'—'Any changes, either in the basis of payment, or in the amount, of an agreed upon rate of pay should be by agreement.')"

"The Committee contends that inasmuch as the Carrier is without authority to make such changes and in the absence of any agreement between the parties to the dispute, no change has legally been made.

"Prior to the effective date of the establishment by the Carrier of the hourly rate of .8825, the position of agent, Gilroy did not work Sundays or Holidays. Coincident with the establishment of the hourly rate by the Carrier, the employee was required to work seven days per week including Sundays and Holidays. This operated to reduce his average hourly rate of pay from .9313 under the monthly rate, to .8825 under the hourly rate, causing a substantial reduction in compensation to the employee. The proper rate being \$190.00 monthly, the correct basis for figuring the employee's compensation is set up in EXHIBIT 1, this tabulation showing the balance due the employee or carrier each separate month over a period of time but not terminating the claim as of the concluding date shown on the exhibit.

was attacked by the Petitioner in Docket Case TE-186, hence, it must be obvious to all reasonable men that the Petitioner is not consistent in the statements which he makes to this Board.

"If the monthly rate is proper, no additional compensation for Sunday and holiday work is due, according to Rule 44."

OPINION OF BOARD: The facts of this dispute are the same as those in Docket TE-624 in which the Division has just rendered Award No. 688. What is said there is equally applicable here.

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 the action of the Carrier in changing the agreed-upon rate of pay of the position of agent at Gilroy, without conference and agreement with the Committee, was in violation of the agreement 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 13th day of July, 1938.

DISSENT ON AWARD 689 DOCKET TE-625

As stated in the Opinion of the Board in this Award, the facts of the dispute are the same as those in Docket TE-624, Award 688. For the reasons set forth in the Dissent on Award 688, I also dissent on the Award in this case, and all that is said in that dissent applies with equal force to this Award.

/s/ GEO. H. DUGAN

The undersigned concur in
the above dissent:

/s/ A. H. JONES
/s/ R. H. ALLISON
/s/ J. G. TORIAN
/s/ C. C. COOK