

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 on the Southern Pacific Company, Pacific Lines, that occupant of the position of third wire chief, 'RO' Office, Ogden, is entitled to compensation on the basis of straight time from 12:01 A.M. to 8:00 A.M., and time and one-half from 8:00 A.M. to 2:00 P.M., effective March 7th, 1932, and continuing daily until such time as his starting time was changed to 12:01 A.M."

EMPLOYEES' STATEMENT OF FACTS: "Effective March 7th, 1932, starting time of third wire chief, 'RO' Office, Ogden, was changed from 12:01 A.M. to 6:00 A.M. daily. Two other wire chiefs were employed in this office, one with a starting time of 8:00 A.M. and the other with a starting time of 4:00 P.M."

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 EMPLOYES: "Rules involved in this dispute are, Rule 12 (g)—

'At stations where wire chiefs are employed, the hours of first wire chief to be eight (8) a.m. to four (4) p.m., second wire chief four (4) p.m. to twelve (12) midnight, and third wire chief twelve (12) midnight to eight (8) a.m.'

and for a portion of time, Rule 40—

'At stations where multiplex apparatus is in use at which three or more telegraphers are employed, there will be positions designated as Manager and the required number of Wire Chiefs to cover period the office is open.'

"Exhibits 'A' to 'Q' inclusive are attached hereto and made a part of this brief.

"Prior to March 7th, 1932, starting time of the three wire chief positions at 'RO' Office Ogden, was—

First wire chief—8:00 A.M.

Second wire chief—4:00 P.M.

Third wire chief—12:00 Midnight

Effective March 7th, 1932, the starting time of the wire chiefs in 'RO' Office, Ogden, was made—

which were the hours not covered by the other two wire chiefs. Therefore, it is evident that Rule 40 was applicable, and was applied, as were the other applicable rules of the Telegraphers' Agreement."

OPINION OF BOARD: The Division is of the opinion that the evidence of record does not justify the inference that the office involved in this dispute was open within the meaning of Rule 40 of the agreement between the parties on the days in question. The claim cannot, therefore, be sustained under this rule.

The petitioner contends, however, that, even though it be admitted that the office in question was not open, the carrier's action in changing the starting time of the "third wire chief" from 12 midnight to 6:00 A.M. was a violation of Rule 12 (g). This provides:

"At stations where wire chiefs are employed the hours of first wire chief to be eight (8) A.M. to four (4) P.M., second wire chief four (4) P.M. to twelve (12) midnight, and third wire chief twelve (12) midnight to eight (8) A.M."

Elaborated further, it is the position of the petitioner that the rule just quoted requires the carrier to assign wire chiefs in accordance with these hours in terms of their numerical designations, regardless of other rules in the agreement, regardless of the number of wire chiefs employed at a station, and regardless of the requirements of the service. If, by way of illustration, only one wire chief were employed at a given station and his designation were "first wire chief," the carrier, under the interpretation requested by the petitioner, would be required to start him at 8 A.M. regardless of the requirements of the service.

The carrier insists that the controlling rules in this dispute are Rule 40 and Rule 21 (e), and that the action complained of was taken under these rules and is justified by them.

Rule 40 provides:

"At stations where multiplex apparatus is in use at which three or more telegraphers are employed, there will be positions designated as Manager and the required number of Wire Chiefs to cover the period the office is open."

Rule 21 (e) provides:

"In reducing the number of positions at stations * * *, last position established shall be abolished first, and hours of remaining trick or tricks changed to cover the required number of hours that the office is to remain open."

The carrier insists further that the interpretation of Rule 12 (g) requested by the petitioner is not tenable. The carrier states that "this rule, as is evidenced by its plain and unambiguous language applies where wire chiefs are continuously assigned covering a 24 hour period." The carrier further states that "it would be fantastic to hold, for example, in an office operated only 8 consecutive hours per day, where three wire chiefs are assigned that such wire chiefs must be assigned" in the manner insisted upon by the petitioner.

It is the opinion of the Division that Rule 12 (g) is limited by Rule 40, and Rule 21 (e) when applicable. It will be noted that Rule 12 is a general rule dealing with starting time. It will also be noted that Rule 40 is a specific rule dealing with offices in which multiplex apparatus is in use. It specifically requires the carrier to assign a sufficient "number of Wire Chiefs to cover period the office is open." This certainly accords the carrier discretion as to the hours that it will keep such an office open. In the construction of contracts, it is a well settled rule that a particular

term controls a general term, particularly when the former follows the latter. It follows, in the opinion of the Division, that Rule 40 limits the operation of Rule 12 (g) and permits the carrier in the circumstances of this dispute to assign the starting time of wire chiefs in the manner best adapted to meet the requirements of the service during the office hours the carrier has established in the exercise of its discretion under Rule 40.

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 complained of was not in violation of Rule 12 (g) of the agreement between the parties.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1938.