Award No. 710
Docket No. TE-705

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central Railroad that, the rate of 77 cents per hour shall be the established rate for the position of yard telegrapher in the yard office at Owensboro, Ky., in conformity with the first paragraph of Rule 41, Article 16, of Telegraphers' Agreement, retroactive to the date the position was created on August 17, 1937."

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

"On August 17, 1937, the position of telegrapher was newly created at Owensboro, Ky., and at a rate of 71 cents per hour.

"The first paragraph of Rule 41, Article 16, of the prevailing Telegraphers' Agreement, reads:

'Rule 41. 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.'

"The committee requested that the rate of 77 cents per hour shall be the established rate for the position, which request was declined by the carrier."

An agreement bearing date of August 16, 1932, is in effect between the parties.

POSITION OF EMPLOYES: "The governing rule in this case of dispute is Rule 41 of Article 16 of the prevailing agreement, which rule is quoted above in the joint statement of facts.

"Rule 41 is invoked in this case. It is this rule the committee contends was violated by the carrier in arbitrarily fixing the hourly rate for the newly created position of telegrapher at Owensboro on August 17, 1937. The carrier violated the rule by utterly disregarding the process the carrier had agreed shall be followed by its adoption of the rule in the prevailing agreement of August 16, 1931.

"The position of telegrapher in the freight yard office at Owensboro was created on August 17, 1937. In fixing the rate for the newly created position, the carrier had but one course to follow in complying with Rule 41; that is:

"There is probably more telegraphing done by the operators at both Beaver Dam and Ripley than is done by the operator at Owensboro. There is not in excess of one hours work per day of this kind at Owensboro.

"There are several other operators' positions in the same seniority district as the Owensboro position where the work and responsibility is substantially in excess of the work at Owensboro and where the operators are paid from 72c to 75c per hour, but since the work and responsibility is so much in excess of that at Owensboro, they are not comparable, and we deem it unnecessary to detail here the facts and circumstances in connection with the work and responsibility on those positions.

"The real facts in the case are that the work and responsibility of the position of operator at Owensboro do not justify a rate in excess of the minimum operator's rate in that seniority district. We have been more than liberal with the employes in establishing the rate of 71c per hour for that position and we respectfully ask that the employes' request for an excessive rate of pay be denied."

OPINION OF BOARD: In support of its contention that the carrier improperly rated the newly-created position of yard-telegrapher in the yard office at Owensboro, Kentucky, the petitioner relies upon Rule 41 of the agreement between the parties. This provides:

> "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."

The petitioner urged, in the first place, that the carrier violated this rule by establishing the rate in question without conference with it. The Division is of the opinion that the rule relied upon does not require the carrier to reach an agreement with the petitioner in the establishment of a rate of pay when it creates new positions, and that it does not even require that the carrier shall confer with it as a condition of fixing a rate. It does not follow, however, that the carrier has an entirely free hand in the application of the rule in question. The petitioner has, of course, the privilege of protesting if, in its opinion, the carrier has improperly rated a position. If it cannot reach a satisfactory adjustment of its claim in conference with the carrier, it enjoys the additional privilege of presenting the controversy to this Division of the Adjustment Board for review and correction, if the Division finds that the carrier abused its discretion in the application of the rule in question. While this carrier as a matter of policy might properly have conferred with the General Chairman before taking the action that it did, the rule in question did not require it to do so.

The petitioner urged, in the second place, that the carrier, in establishing the rate for the position in question, should have followed some "average," "median," or "modal" rate. It is the opinion of the Division that this contention is wholly untenable. The rule in question merely requires the carrier to fix the rate of a newly-created position "in conformity with that of existing positions of similar work and responsibilities in the same seniority district." An attempt to apply an average or a median rate in the fixing of a new rate would, in the opinion of the Division, entirely defeat the purpose of the rule in question.

The petitioner urged, in the third place, that the carrier, even under its own interpretation of the rule, improperly rated the position in question. It will not be necessary to review in detail the statements and counterstatements with which the record abounds. It is important to note, however, that the office involved is located at the terminal of a relatively unimportant branch line of the carrier. It is also important to note that the carrier abolished this position in 1928, reestablished it in 1937, and discontinued it again within seven months after its reestablishment. The Division concludes that the evi-

dence of record does not support the contention of the petitioner that the carrier established an improper rate when it reestablished the position in controversy.

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 evidence of record does not support the contention that the rate in question was improperly established, or that a too low rate was established.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1938.