

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
PERE MARQUETTE RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Pere Marquette Railway Company that; the position of agent-operator at Beaverton, Michigan, was arbitrarily reclassified as a non-telegraph agency on February 16, 1932, and the rate reduced from 60¢ per hour to 50¢ per hour without negotiations or agreement and later increased to 52¢ per hour by agreement but contingent upon the position being made a non-telegraph agency in fact, and, that; after the non-telegraph agency rate 52¢ had been agreed upon for the position, communication service was not discontinued, and because of which the scheduled rate of 60¢, per hour plus the 5¢ per hour increase established on August 1, 1937, shall be restored and F. D. Barbaree the regularly assigned incumbent and any others who worked this position since date of reclassification to non-telegraph agent be retroactively reimbursed the difference between the rate established for the position if made non-telegraph agent in fact and the schedule agent-operator rate."

COMMITTEE'S STATEMENT OF FACTS: "A contract of agreement bearing date May 16, 1927, as to rules and rates of pay is in effect between the parties to this dispute. The position of agent-operator, Beaverton, Michigan, is listed in the wage scale with a rate of 60¢ per hour applying thereto.

"On February 16, 1932, the management without negotiations, notice or agreement reclassified the scheduled agent-operator position Beaverton, Michigan, to non-telegraph agency and established a rate of 50¢ per hour in lieu of the 60¢ per hour rate listed in the wage scale of the schedule agreement.

"The committee protested this unilateral action of the carrier as to reclassification and reduction in the rate of pay. Negotiations followed and on July 23, 1932 a rate of 52¢ per hour was agreed upon with the understanding the agent-operator position would be made a non-telegraph agency in fact, and that thereafter communication service would be discontinued.

"The incumbent of the non-telegraph agency since the change in classification and rate of pay was made effective is required to transmit and receive by telephone, messages and reports of record in practically the same manner and to the same extent as was done prior to the change in classification and rate of pay, notwithstanding the fact that non-telegraph agents when classified as such must not be required or permitted to by either telegraph or telephone transmit or receive messages and/or reports of record.

POSITION OF EMPLOYEES: "The Telegraphers' Agreement effective May 16, 1927 is still in effect and constitutes an agreement between the parties governing working conditions and also established the rates of pay of all positions included in the agreement, which also includes the position of agent-operator at Beaverton, Michigan. The rate of pay thus fixed through negotiations and agreement between the parties and incorporated in the agreement was 60¢ per hour.

ton, and, except for a short period in 1937, the business conducted by the station is negligible, no mail or express being received there, no Western Union business, and no passengers handled. The business has greatly decreased since the entering into of the Telegraphers Agreement in 1927, except for a period of approximately one month and a half in 1937, during which time oil was being shipped from Beaverton, and for that period an additional part time man was put on. However, the establishment of a pipe line has since eliminated the greater part of this business.

"It is further the position of the carrier that, since the establishment of the station as non-telegraphic, there has been no change in the nature of the work of the agent to add to the burden of his duties. On the contrary, if anything, his work has materially decreased. Furthermore, after the establishment of the station as non-telegraphic and prior to the establishment of the 52¢ rate by negotiation and agreement on July 23, 1932 (Exhibit 4), the general chairman of the organization made a careful investigation of this station. During that period, the agent did exactly the same type of work as he is now doing. At that time no objection was made to the use of the commercial telephone by the agent for the purpose of making calls incidental to his routine work. On October 7, 1937, for the first time, the claim was made in a letter by General Chairman Burr that such calls constituted the position a telegraphic one (Carrier's Exhibit 5). Thus, more than 5 years have elapsed since the agreement between the carrier and the committee, which would appear to be conclusive evidence that their contention is without basis. In this regard it is specifically provided in Article II, Paragraph (b) of the agreement of 1927, that any employee who feels himself unjustly treated shall have a fair and impartial hearing, provided written request is made within ten days of the receipt of advice (Carrier's Exhibit 6). In the present case, no such request was made and the claim should be denied."

OPINION OF BOARD: Effective February 16, 1932, the carrier reclassified the position of agent-operator at Beaverton, Michigan, to a non-telegraph agency and reduced the hourly rate of pay from 60 cents per hour to 50 cents per hour. Subsequently following protest conferences were held out of which grew a memorandum of agreement fixing the rate of the reclassified agency at 52 cents per hour. It is not material to this case that certain other stations were reclassified as of the same date as Beaverton and were likewise included in the protest and in the memorandum of agreement disposing of the issue. The agreement, referred to as Employees' Exhibit A, bears the following caption:

"Memorandum of Agreement between the Representatives of the Railroad Telegraphers and the Pere Marquette Railway Company, in connection with the rates of pay for certain stations recently made non-telegraph agencies."

The first paragraph of the agreement states that the stations listed were recently made non-telegraph and the rate of 50 cents per hour established for each of them. The second paragraph recites that the rate of pay was protested and that as a result of conferences agreement was reached with respect thereto and the rates established as listed in the body of the agreement.

The issue here is whether Beaverton is a non-telegraph agency. The record indicates that not until October 7, 1937, was any protest registered by the employees with respect to the classification of position of agent at Beaverton. In a letter of that date to the Superintendent, the General Chairman states that "while in Beaverton last week I learned that telephone service was not discontinued at the time this position was supposed to have been made non-telegraph sometime in 1932." The telephone he refers to is a commercial phone which the record shows to have been in the office for many years prior to the reclassification of the position in 1932. The record also shows that at the time of the reclassification in 1932 there was no railroad wire in the agent's office, either telephone or telegraph, and had not been for many years prior thereto.

The record as originally submitted to the Board was insufficient to indicate whether Beaverton is a non-telegraph station conforming to the understanding between the parties. The Board, therefore, requested the parties to conduct a joint investigation for the years 1937 and 1938 and report to the Board certain information with respect to the character of the use to which the commercial phone is devoted, together with copies of report forms and messages transmitted by means of the commercial phone in those years. The parties were also asked to make such comment and supply such other information as their joint investigation suggested might be helpful to the Board.

As a consequence of the joint investigation, it develops that the Memorandum of Agreement of July 23, 1932, was based upon the mutual understanding that agents at non-telegraph stations would not be required to send or receive train orders, messages, or reports by telegraph or telephone, i. e., the usual work performed by an operator at a telegraph agency. When the reclassification was made in 1932, instructions were put out by the Superintendent, designed to accomplish the reclassification to non-telegraph agencies of the positions involved. The investigation developed that now, however, the agent at Beaverton is regularly, day by day, receiving and transmitting messages and reports which, it is shown by the record in this case, is substantially the same work he performed prior to the reclassification. The understanding did not require the removal of the commercial telephone as a requisite of the reclassification.

Based on all the facts and circumstances of this particular case, not establishing a precedent with respect to retroactive payments, and in view of the conditions now existing at Beaverton, and shown to exist at the time the claim in this case was made by the General Chairman's letter of October 7, 1937, it is the Opinion of the Board that the formerly existing agent-operator rate of 60¢ per hour (plus the increase effective August 1, 1937) should be restored effective with the date of the claim, October 7, 1937, and that such rate be continued (unless changed by the parties) until such time as Beaverton may be reclassified as a non-telegraph agency, in accordance with the understanding which formed the basis of the agreement of July 23, 1932.

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 agent-operator rate at Beaverton should be restored effective with the date of the claim, October 7, 1937, and continued in effect until and unless the position is reclassified as non-telegraph agent, in accordance with the above Opinion.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1939.