

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad, that the hourly rate of pay established through negotiations and agreement for telegraphers in the several offices on the system likewise applies to employes who operate teletype machines in communication service in lieu of the telegraph in offices where teletypes are installed, and employes who operate teletype machines shall receive the negotiated telegraph rate in the office where such service is performed, and that: since the installation of these teletype machines in certain offices employes receive and transmit by teletype mechanical devices instead of Morse mechanical devices, business of the office or offices in question and the same result is obtained by the use of either mechanical device, that all such employes in said office or offices who have received a lower rate of pay for the time occupied in teletype service than that negotiated and fixed by agreement for telegraph service, shall be reimbursed the difference between the negotiated telegraph schedule rate and the arbitrary rate fixed by unilateral action of the management for teletype service, retroactive to the date teletype service was inaugurated in the office or offices involved in this dispute."

EMPLOYEES' STATEMENT OF FACTS: "A contract of agreement bearing date of January 1, 1928, as to rules of working conditions; and August 1, 1937, as to rates of pay, is in effect between parties to this dispute.

"Rule 1—Scope of said Agreement provides:

'This Contract will govern the employment and compensation of Telegraphers, Telephone Operators (except switchboard operators), Agent-Telegraphers, Agent-Telephoners, Levermen, Tower and Train Directors, Block Operators, Staffmen and Agents except the position of Agents at Denver, Colorado Springs, Pueblo, Salida, Leadville, Alamosa Grand Junction, Salt Lake and Ogden, and will supersede all previous schedules, agreements and rulings thereon.'

"Rule 34—Wage Schedule of said Agreement includes the positions covered by the Scope Rule and the rate of pay fixed by Agreement between the management and Committee for each position. The rate of pay for Relay Operator thus fixed by Agreement is 83¢ per hour.

"Prior to about January 1937, all communication work involving transmission and reception of messages and reports of record was performed by the use of mechanical devices known as Morse telegraph instruments and operated by employes classed as Telegraph Operators. The operators of these Morse telegraph instruments convert characters into impulses which

position of teletype or printer operator as requested in this case; and (3) the rates now paid teletype operators compare favorably with and in some instances exceed the rate of pay for such work on other railroads."

OPINION OF BOARD: An Agreement bearing date of January 1, 1928, is in effect between the parties to this dispute. Prior to January 1, 1937 all communication work involving transmission and receipt of messages, reports, etc., in certain offices of carrier, including relay offices, was performed by employees covered by this agreement. Morse telegraph instruments were used for the transmission and receipt of such messages and reports.

In January 1937 Carrier began the installation of a different mechanical device, commonly termed "teletype," in its several relay telegraph offices for the handling of these messages, etc. It required some training before anyone would become proficient in the operation of teletype machines and arrangements were made by Carrier to conduct schools for the instruction of Morse telegraphers in the use of such machines.

At the same time carrier began negotiations with the duly constituted representatives of the Brotherhood for amendments to the prevailing agreement between the parties relating to rates of pay and working conditions applicable to the employees that would be engaged in operating the new machines. Carrier, however, taking the position that the work was not covered by the prevailing agreement, did not give the notice specified in Rule 35 applicable to proposed changes in the Agreement.

These negotiations progressed to the point of agreement upon every question except the rate of pay. Upon this latter question the parties were unable to reach an agreement, whereupon the carrier, by unilateral action, established and made effective, as to employees engaged in the operation of teletype machines, a rate of pay somewhat lower than the lowest rate paid telegraphers in relay offices. The Brotherhood contends the work is covered by the Agreement and the claim is for the difference in this rate of pay, so established by Carrier, and that fixed by the Agreement for telegraphers in such offices. It should be observed that no jurisdictional dispute is involved in this case.

Carrier contends that this work and the employees performing it are not covered by the agreement and that this Board is therefore without jurisdiction over this dispute. In support of its contention, carrier argued that the duty rested upon the employees and not upon it to take the case to mediation, as authorized by the Amended Railway Labor Act, as they desired to bring the work under the Agreement.

The Board is of the opinion that the work is covered by the agreement and that it has jurisdiction over the dispute. The agreement is clearly applicable to certain character of work and not merely to the method of performing it. To hold otherwise would operate to destroy collective bargaining agreements. Improved methods have no more effect upon such agreements than such agreements have upon the right of the carrier to install such methods. Certainly no one would question the right of carriers to make improvements in methods of performing work and we think it is equally true that improved methods do not operate to take the work out from under contracts with employees performing same. The teletype is simply a new and improved mechanical device used for the performance of the same work theretofore performed by the use of Morse instruments.

As to carrier's contention that the duty rested upon the employees to take the case to mediation, it is only necessary to note that the Amended Railway Labor Act gives to each party the right to invoke mediation upon failure to reach an agreement through conference. Assuming the introduction of the improved instruments justified changes in rates of pay or working conditions, as contended by carrier, since the work is under the agreement, the duty rested upon the carrier to negotiate such changes in accordance with Rule 35

of the agreement and, if necessary, to invoke mediation in conformity with the requirements of Section 5 of the Amended Railway Labor Act. The change in the rate of pay could not be inaugurated by the unilateral action of the carrier as was done in this case.

As pointed out above, the claim is for the lowest rate of pay applicable to telegraphers in the relay offices shown in the wage scale of the agreement. The Board holds that carrier is obligated to pay that wage scale until it is changed pursuant to the 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 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 Carrier violated the Agreement in effect between the parties when it established a rate of pay for the work in question lower than the wage scale specified in said Agreement for telegraphers.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 20th day of June, 1939.