

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that (a) the practice of the carrier in permitting and/or requiring section foremen to regularly secure line-ups or positions of trains by telephone at small non-telegraph agency, San Antonio, New Mexico, is in violation of the Telegraphers' Agreement and shall be discontinued; (b) that the use of a telephone located either outside or inside the station building at San Antonio, New Mexico, for communication purposes classifies the position as agent-telegrapher, rate of pay 75¢ per hour since January 20, 1938, and entitles the incumbents to retroactive reimbursement accordingly, and (c) employees who have occupied or are occupying such agency be compensated under the call and overtime provisions of the Telegraphers' Agreement for each occasion train line-ups have been secured by section foremen outside of the agent's assigned hours."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute, and is on file with the National Railroad Adjustment Board.

"The Telegraphers' schedule bearing effective dates of February 5, 1924 as to rules and April 1, 1925 as to rates of pay (wage scale revised January 1, 1928 and August 1, 1937) lists the following:

'San Antonio	agent-telegrapher	79¢ per hour
	telegrapher-clerk	65¢ per hour

These rates progressively increased would be 87¢ and 73¢ respectively.

"Effective April 25, 1932 the Carrier without conference and agreement removed the agent-telegrapher position from the Telegraphers' schedule, substituting therefor what is termed a 'resident agency.' The Telegrapher-clerk position had since been abolished, date unknown.

"By agreement (October 28, 1936) and following the issuance of Award No. 255, the agency at San Antonio was restored to the Telegraphers' Schedule, effective November 1, 1936, with a classification of 'small non-telegraph,' rate of pay 51¢ per hour. (Rate increased 5¢ per hour August 1, 1937.)

"The agent at San Antonio, subsequent to November 1, 1936 and up to January 20, 1938 was permitted and/or required to use telegraph and/or telephone facilities by the Railway Company for its business. Effective January 20, 1938 the use of such telegraph and/or telephone by the agent was discontinued.

telegraph employees, and were installed for the use of train and enginemen in cases of emergency and for use of maintenance employees in connection with their work. These telephones are not connected with the dispatchers' annunciator system and cannot therefore be rung or used by the dispatcher to contact any particular person or persons at the various points of installation, which fact in itself is evidence that these telephones were not intended for any other use than that indicated above.

"A brief review of this dispute will show that the Organization, without the citation of any rule in the agreement to support its claim, is asking this Board to reclassify the non-telegraph agency at San Antonio to that of agent-telegrapher at the rate of 75¢ per hour for no other reason than that the line-ups are secured by the section foreman through the use of a booth telephone. All this regardless of the fact that no telegrapher and/or telephone facilities are present in the station and no telegrapher and/or telephone duties are to be performed. Further, they seek such a decision from the Board notwithstanding the fact they agreed with a full understanding of the conditions existing at that point to the classification of San Antonio as a small non-telegraph agency, as evidence the Memorandum of Agreement dated October 28, 1936 and the Telegraphers' Schedule effective December 1, 1938.

"The facts of record call for a denial of the claim."

OPINION OF BOARD: Effective April 25, 1932, the Carrier without conference and agreement with the committee removed the agent-telegrapher position from the Telegraphers' Schedule substituting therefor what is termed a "resident agency." The Telegrapher-clerk position has since been abolished, date unknown.

By agreement (October 28, 1936) and following the issuance of Award No. 255, the agency at San Antonio was restored to the Telegraphers' Schedule, effective November 1, 1936, with a classification of "small non-telegraph," rate of pay 51¢ per hour. (Rate increased 5¢ per hour August 1, 1937.)

The agent at San Antonio, subsequent to November 1, 1936 and up to January 20, 1938 was permitted and/or required to use telegraph and/or telephone facilities by the Railroad Company for its business. Effective January 20, 1938, the use of such telegraph and/or telephone by the agent was discontinued.

The carrier on July 18, 1939 met the claim of the organization that a telegraph rate of 75¢ per hour should and would be applied November 1, 1936 to January 20, 1938, the period in which the agent was required to use telegraph or telephone facilities.

Effective on or before January 20, 1938, the company telegraph and telephone facilities were removed from the depot, the latter to a booth located twenty-two (22) feet therefrom.

Section foremen are required and/or permitted by the Carrier, to regularly make use of the telephone located in booth outside the depot, and which was removed from the depot to that location to secure line-ups or positions of trains during or outside of the agent's assigned hours at San Antonio.

The identical issue was before this Board in the very recent Award No. 1261, in which this Board sustained the claim. On authority of that award, this Board sustains the claim in this case.

The Board reaffirms the principle announced by the following quotation in Award No. 604:

"What has been said hereinbefore is not intended to affect the established practice of section and extra gang foremen using tele-

phones occasionally—but not as a regular practice—at outlying points where no operator is available, for the purpose of obtaining instructions and information concerning their work. These cases clearly do not fall within that category.”

The Board recognizes the right of the carrier to place telephone at any place it sees fit, providing it does not do so for the purpose of evading the agreement, as was done in this case. In other words, the carrier has the right to place a telephone at any place it sees fit and there would be no penalty for doing so, provided it was used in such a way as not to violate the Telegraphers’ Agreement.

Under Article V (i) of the Agreement, reparation should be limited to a period beginning thirty days prior to July 14, 1938, the date protest was filed by the Committee.

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 employes 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 violation of the Telegraphers’ Agreement at the station here involved will be sustained.

AWARD

Claim sustained, subject to the application of Article V (i) as to retro-active payment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.

Dissent to Award No. 1284—Docket No. TE-1148

This award is in error because it relies upon a former award, No. 604, the Opinion in which was incompletely comprehended, and upon the incomplete recognition of the facts of record rather than upon the agreement between the parties and the circumstances which surrounded the negotiation of that agreement relating to the unquestioned procedure and right of action of section foremen securing line-ups of trains in protection of their duties, and the lives of the men entrusted to their care as well as the lives of others.

The fallacy of upholding claims of Telegraphers for such inherent duties of section foremen is set forth in dissents to Awards Nos. 1261 and 1268, which dissents are hereby made a part of the dissent to the instant award.

S/ A. H. JONES
S/ C. C. COOK
S/ R. H. ALLISON
S/ C. P. DUGAN
S/ R. F. RAY