

Award No. 1302

Docket No. TE-1104

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Benjamin C. Hilliard, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka & Santa Fe Railway, that it is improper under the terms of the telegraphers' agreement to require the regularly assigned telegrapher at Phoenix, Arizona, to also perform telegraph service at the Telegraph office at Mobest, Arizona; that the former telegraph position at Mobest shall be restored to perform the telegraph service which is being performed there; and that available employes on telegraphers' extra list shall be paid day's pay for each day the telegrapher at Phoenix has been used to perform telegraph service at Mobest in addition to performing the duties of the position at Phoenix to which he is regularly assigned."

**EMPLOYES' STATEMENT OF FACTS:** "An Agreement bearing effective dates of February 5, 1924, as to rules, and August 1, 1937, as to rates of pay, is in effect between the parties.

"Mobest is located outside the City of Phoenix, approximately two (2) miles to the North. All freight trains originate and terminate at Mobest.

"On April 29, 1938, and immediately prior thereto, Mobest employed two telegraphers, assigned hours 9:00 A. M. to 5:00 P. M. and 7:00 P. M. to 3:00 A. M., providing sixteen hours telegraph and train order service. Effective April 30, 1938, as a result of force reduction, Mobest employed one telegrapher, assigned hours 6:00 P. M. to 3:00 A. M. (one hour for meals) providing eight hours telegraph and train order service. 'PO' Phoenix employed two telegraphers, assigned hours 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M. on week days, and 7:30 A. M. to 9:30 A. M. and 3:00 P. M. to 6:45 P. M. on Sundays and holidays. These assignments were in effect at Phoenix between April 30, 1938, and June 11, 1938, providing sixteen hours telegraph and train order service on week days and five hours forty-five minutes on Sundays and holidays; and from June 12, 1938, to October 14, 1938, inclusive, the two telegraphers were assigned from 6:30 A. M. to 2:30 P. M., and 2:30 P. M. to 10:30 P. M. on week days, and 6:30 A. M. to 8:30 A. M. and 2:30 P. M. to 10:30 P. M. on Sundays and holidays, providing sixteen hours telegraph and train order service on week days and ten hours on Sundays and Holidays.

"Beginning with October 15, 1938, up to the present date, operators were employed at each Mobest and Phoenix as shown below, with assigned hours as indicated:

of business, there would only be one train to serve, requiring about thirty minutes of an operator's time to handle it.

"It is the position of the Carrier that where there are two offices in the same yard under the jurisdiction and supervision of one agent that it has the right to discontinue either office entirely, according to the demands of the service, and handle the business from one office, or discontinue, if there is more than one position in either office, any one of the positions and handle the work during that period through the other office; in other words, to handle the work entirely from one office during any time of the day or night where it is not necessary to assign more positions or men than are actually necessary. There is no rule in the schedule that denies the Carrier this right."

**OPINION OF BOARD:** Notwithstanding the two stations involved are in the same general yard of the carrier, only two miles apart, and both supervised by one supervisory agent (not in the telegraphers' schedule), Mobest and Phoenix are separate telegraphic offices and so listed in the prevailing Agreement. All freight trains originate and terminate at Mobest. April 29, 1938, and immediately prior thereto, two telegraphers were assigned to Mobest, in different tricks, and each serving eight hours. April 30, 1938, the services of one of the telegraphers was dispensed with, leaving but one telegrapher on duty at Mobest. At Phoenix two telegraphers were employed, working different tricks. After the reduction of telegraphic hours of service at Mobest, as stated, and for a time, train orders and clearances addressed to trains departing Mobest at a time when the one telegrapher employed there was not on duty, were transmitted to a telegrapher at Phoenix who gave them into the keeping of the supervisory agent, and that employee carried them to Mobest and deposited them on a train register to be picked up by train crews. That proceeding was protested by the telegraphers' organization, as the result of which the Carrier ceased to cause delivery through the immediate hands of the supervisory agent, and thereafter resorted to the expedient of having the supervisory agent, using his automobile in such service, to drive the telegrapher employed at Phoenix to whom the orders had been transmitted from the dispatcher, to Mobest, who would leave them on the train register at that station. The telegraphers' organization protested this modified manner of delivering train orders for the use of train crews departing Mobest. Out of the situation thus briefly stated, the claim here arose.

Little doubt obtains in relation to the first alternative resorted to by the carrier in providing for delivery of train orders to train crews at Mobest through an agency other than telegraphers. The carrier does not seriously contend, if we have not misunderstood its attitude, that that method was permissible. But what of the second method employed, that is to say conveyance by the carrier of a telegrapher employed at Phoenix, one telegraph station, to Mobest, another telegraph station, to perform duties within the Agreement which, if one were employed there at appropriate hours, would be discharged by a Mobest telegrapher? It seems appropriate to observe that near proximity of the two stations—both being specifically designated stations—if not of importance. Award No. 434. For purposes here, Phoenix and Mobest are quite as remote, one from the other, as stations so far apart as to make impracticable the method employed by the carrier to communicate train orders received at one station for use of train crews at another station. That the accomplishment was not physically difficult is without legal appeal. Mobest, an established telegraph station, was the seat of sufficient volume of the carrier's business that the whole thereof could not have requisite attention within the tour of duty of one telegrapher, hence additional telegrapher service became necessary. Under the Agreement, as we interpret it, the carrier was required to supply that service through the employment of telegraphic help at the station where the demand originated. Its attempt otherwise was void of contractual approbation. We have benefitted by study of Awards 86, 388, 434, 496, 556, 636, 709, and many others referred to in presentation. We think the claim should be sustained.

**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 employes 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 carrier violated the Agreement.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1940.