

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

George E. Bushnell, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines that George Edwards be compensated at 88½¢ per hour for relief service performed by him on the following dates: 1938—July 8th, 4 hours; July 29th, 4 hours; August 5th, 7 hours; August 26th, 4 hours; August 28th, 8 hours; September 16th, 8 hours; October 12th, 3 hours; October 13th, 8 hours; October 27th, 8 hours; November 16th, 8 hours; December 24th, 8 hours; 1939—January 17th, 8 hours; January 20th, 8 hours; January 28th, 8 hours; February 4th, 8 hours; March 4th, 3 hours. On all dates in question, Mr. Edwards relieved a regularly assigned employee whose rate of pay was 88½¢ per hour."

**EMPLOYES' STATEMENT OF FACTS:** "Telegrapher (Printer-clerk) George Edwards performed relief service on the dates set forth in the Statement of Claim, relieving telegraphers holding regular assigned positions as set forth in EXHIBIT 'A,' this submission. For this relief service performed, Edwards was not paid the hourly rate that the men he relieved received. The men Edwards relieved drew .885 per hour while Edwards was paid only .70 per hour.

"There is an Agreement in effect between the parties to this dispute, dated, as to rules and working conditions September 1st, 1937, and as to rates of pay, May 1st, 1927, revised July 1st, 1930, and August 1st, 1937."

**POSITION OF EMPLOYES:** "EXHIBITS 'A' to 'I' inclusive are attached to and made a part of this Brief.

"This claim is filed and prosecuted under Rule 4 (b) of the agreement in effect, which we quote:

'Telegraphers will receive the same compensation in relief service as the telegrapher they relieve.'

"The Carrier ignores Rule 4 (b) and relies upon Section (e) of that certain Memorandum of Agreement negotiated and dated September 5, 1929, which pertains to the operation of duplex and multiplex automatic tape printer machines. We quote the Section:

'(e) Telegraphers so assigned may be used on Morse circuits, for which service they shall receive the telegraphers' rate of pay of the office. Telegraphers, whose seniority antedates July 2, 1929, shall receive telegraphers' rate of pay of office, when used on either receiving or puncher side of duplex and/or multiplex automatic tape printer machines. Telegraphers employed subsequent to July 1st,

applies. This, notwithstanding the fact that the character of the duties of the position is the same. This clearly demonstrates again that the proper rate of pay of an employee occupying the position of Printer Clerk (Puncher) depends entirely upon the seniority classification of the employee, as provided in the Agreement of September 5, 1929 (CARRIER'S EXHIBIT 'C').

"The attention of the Board is invited to the lapse of time between the date on which service was performed by Mr. Edwards and the date of the first claim as contained in Organization's letter of June 10, 1939, over eleven (11) months subsequent to the earliest date (July 8, 1938) and over three (3) months after the latest date (March 4, 1939).

"Without admitting that the claim in behalf of Mr. Edwards has merit otherwise, it is the position of the Carrier that none can properly exist for any date prior to June 10, 1939. As your Board stated in Award No. 1079:

'To hold otherwise would tend to turn this Board in the absence of a cut-off rule, into a court of claims embracing alleged violations running back into an almost indefinite past, and would do violence to the general purposes of the Railway Labor Act as well as to the requirements of orderly procedure.'

### CONCLUSION

"As we have conclusively shown that Agreement Rule 4 (b), the only agreement provision relied upon by the Petitioner, does not support the alleged claim, and as it is otherwise without merit, the Carrier requests that the Board accordingly deny it."

**OPINION OF BOARD:** The question presented for decision is: Does Section (e) of an agreement dated September 5, 1929, modify or eliminate Rule 4 (b) of an agreement between the parties dated September 1, 1927?

Rule 4 (b) reads: "Telegraphers will receive the same compensation in relief service as the telegrapher they relieve." The word "telegrapher" according to Scope Rule 1 is a general term and covers both "Morse telegraphers" and "Telegrapher-printer clerks." The employees who were relieved in the instant case were Morse telegraphers. At the time they were performing printer clerk (puncher) work, and for which, under the agreement of 1929, they were drawing Morse pay of 88½¢ per hour. George Edwards, the employee who relieved them is a telegrapher (printer clerk) who, while on regular or extra assignment as such, is paid 70¢ an hour.

Section (e) is a part of an agreement adopting a plan "in settlement of question involving operation of duplex and/or multiple automatic tape printer machines in telegraph offices" of the carrier. This agreement provides that new positions or vacancies will be bulletined to all telegraphers and in filling positions telegraphers so assigned may be used as stated in Section (e) which is quoted in full in the employees' statement herein. This section concludes with the language that led to this dispute and which the carrier claims with other language in the agreement modifies Rule 4 (b) and limits claimant to the compensation paid of 70¢ an hour whether working as a regularly assigned, extra or relief duplex operator.

The argument of the carrier is logical and consistent but supporting proof is lacking of specific modification of Rule 4 (b). In the absence of such modification by agreement of the parties we are forced to apply the provisions of Rule 4 (b) and arrive at the somewhat inconsistent result that claimant although not qualified as a Morse telegrapher who relieved one then performing the work of a telegrapher (puncher) is nevertheless entitled to receive the same compensation for this relief service as the Morse telegrapher he relieved.

Had the parties intended to modify Rule 4 (b) they should have done so by explicit language for we cannot read additional modifying language into the agreements between the parties.

**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 action of the carrier in the instant case was a violation of Rule 4 (b) of the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.