Award No. 1670
Docket No. TE-1537

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, 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 the position of agent-telegrapher at Winkelman, Tucson Division, be bulletined to the employes coming within the Scope Rule of the Telegraphers' Agreement on the Tucson Division."

EMPLOYES' STATEMENT OF FACTS: "Prior to December 5th, 1932, Winkelman and Hayden, Tucson Division, were maintained as separate and distinct agencies, an employe represented by this Organization was stationed at each point and paid the compensation shown in the agreement between the parties to this dispute.

"As a result of Decision 6449, Arizona Corporation Commission, pertinent portions of which are quoted in EXHIBIT 'A,' this Brief, the agencies of Hayden and Winkelman were consolidated, the agent-telegrapher at Winkelman removed from his assigned position and the work formerly performed by him was taken over by the agent-telegrapher at Hayden.

"There is an agreement between the parties to this dispute bearing an effective date as to Rules of September 1st, 1927 and as to wages, of May 1st, 1927, as amended July 1st, 1930 and August 1st, 1937."

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

"The Committee requests that its briefs in Docket TE-274, Award 388, be considered a part of its Briefs in this case, for the reason that the facts are similar in each case and the Rules involved are equally applicable with the single exception that the Committee is not requesting the employe be restored to his position nor that he be compensated for monetary loss, the request of the Committee in its Statement of Claim calling for a bulletining of the position under Rule 19 (c) of the Agreement in effect.

"Rules 5, 9 and 19 (c) are applicable to this dispute and we quote them herein for reference:

'RULE 5

'Guarantee

'Regular assigned telegraphers will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays.

"No rule of the Telegraphers' Agreement requires or contemplates that negotiations must be undertaken with the Organization before an agency may be created or discontinued. The Agreement imposes no restrictions upon the establishment of an agency station. The only requirement (Agreement Rule 2) is that when new positions covered by the Agreement are created, the compensation must be fixed in conformity with that of existing positions of similar work and responsibility. Conversely, there is and can be no restriction against abolishing an agency or a position whenever it is no longer required. In fact, the Board stated in Award No. 388:

'. . . There can be no question that the carrier is free to abolish agencies and the position existing at such agencies. . . .'

"The attention of the Board is invited to the following paragraph in Carrier Representative Mr. R. E. Beach's letter of May 26, 1937, to General Chairman, Mr. N. D. Pritchett (Carrier's Exhibit 'D'):

'**You have repeatedly informed me** in connection with the so-called consolidation of stations, that **if the Carrier changed the classification to that of a non-agency** and the station is shown as such in the tariffs, **that you consider the station as being closed, and that you would not be interested in such an arrangement nor contend that a consolidation of agencies had been effected.**'

(Emphasis ours.)

"The above statement was not and has not been challenged by the Petitioner during the exchange of any subsequent correspondence in connection with this alleged claim (Reference Carrier's Exhibits 'D' to 'I', inclusive).

"There is no basis whatever for this claim, except the desire of the Petitioner to obtain the establishment of an unnecessary position. No Agreement rule supports it. Award No. 388 of your Board, on which the Petitioner relied in progressing the claim with the Carrier, clearly does not support it, the facts and circumstances in that Award being entirely dissimilar as we have heretofore shown.

CONCLUSION

"The Carrier submits that the claim is wholly without merit and requests your Board to deny it in every particular."

OPINION OF BOARD: The question in this case is whether or not the agency at Winkelman was abolished.

The order of the Arizona Commission is ambiguous in its wording as to the status of Winkelman, and in any event the question at issue must be decided in the light of what was actually done and is being done at Winkelman in relation to the agency at Hayden.

The fact situation is a novel one. In Award 388 of this Division, the briefs and entire record of which we have carefully reviewed, and in several Awards subsequent thereto which followed the principle of Award 388, the hours of work at two adjoining stations were reduced; the agent at one was laid off, and the agent at the other divided his time between both. The stations were kept open (during the reduced hours) for the normal transaction of business; and separate agency accounts were maintained as before. It was held that the agent laid off was improperly laid off because his agency had not been abolished; a reduction of hours was accomplished and nothing more.

Much more than this was done at Winkelman and therefore the case cannot be disposed of merely by citing Award 388 and those which have followed it. Nor have we been referred to any other Award which is strictly in point.

We have to ask this question: is the Hayden-Winkelman situation **more** like that presented in Award 388, or **more** like that of an agency with a non-agency station adjacent to it? For it is not exactly like either.

It departs from the situation in Award 388 in that the Winkelman station has been entirely closed, and all its equipment removed (with no evidence that any substitute office facilities in Winkelman have been arranged for); its separate accounts have been abolished; no telegraph service is rendered there; and the station is listed by the I. C. C. as a non-agency prepay station.

The case differs from that of an agency with a non-agency station adjacent to it in that the Hayden agent is required by the Commission's order to go daily to Winkelman and there serve as agent for a certain amount of time which, provided it is adequate to serve the public, is left discretionary with the carrier. The employes' case really hinges on this requirement; it is argued that so long as **any** agency work is done at Winkelman the agency has not been abolished. On the other hand, the work which the Hayden agent does at Winkelman when he goes there appears to be no different from that which he would do upon going to any non-agency station; indeed there is nothing to differentiate Winkelman from a non-agency station except that the Hayden agent must go there once a day instead of merely going when business necessitates.

On the basis of the whole record we have concluded that what really happened was that the Winkelman agency was abolished and Winkelman became a non-agency station, subject to the Commission's requirement that the Hayden agent should make one visit to Winkelman a day instead of at the carrier's uncontrolled discretion. It would seem to us a more strained interpretation of the facts to hold that the agency at Winkelman continued to exist with a mere reduction of hours.

We intend by this decision no weakening of the principle of Award 388, nor to foreclose the consideration of cases whose facts may lie somewhere in between those presented in Award 388 and those presented here.

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 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 no violation of the Rules has been established by the evidence.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of January, 1942.