

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
DENVER & RIO GRANDE WESTERN RAILROAD

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Denver & Rio Grande Western Railroad, that the agent-telegrapher position at Avon, Colorado, not having been abolished in fact, shall be re-established as of November 15, 1940, the date on which it was improperly declared abolished by the Carrier; that the regularly assigned incumbent on the position shall be restored thereto, and retroactively compensated in an amount equal to what he would have earned had he not been improperly removed from his position, less any time he may have been on requested leave of absence; and that the senior qualified extra agent-operators shall be paid at the rate of this position for such days they were available within the period the regularly assigned incumbent was on requested leave of absence."

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date January 1, 1928, as to rules of working conditions, and August 1, 1937, as to rates of pay, is in effect between the parties to this dispute.

The position of agent-telegrapher at Avon, Colorado, involved in this dispute, is covered by said agreement and at the rate of 68 cents per hour.

During the month of October 1940, the Carrier filed application with the Public Utilities Commission of the State of Colorado for permission to abandon its agency station at Avon, Colorado, from November 15 to May 1 of each year, which permission after public hearing was granted.

The Avon agency was thereupon abandoned effective November 15, 1940, to May 1, 1941, and the eastbound freight transportation service of the station thereafter performed by the agent at Minturn, Colorado, and the westbound freight transportation service of the station thereafter performed by the agent at Wolcott, Colorado. Milk and cream shipments out of Avon normally moving eastbound, and on which commissions were paid the agent, were thereafter handled by the agent at Minturn, who was paid the commissions formerly paid the agent at Avon.

Under this guise of abandonment of the agency station at Avon, the Carrier declared the agency position abolished and removed the regularly assigned agent from the position, who took voluntary leave of absence November 15, 1940, to January 15, 1941, and February 1, 1941, to April 30, 1941. During the interim, January 16, 1941, to January 31, 1941, this employe worked as agent at Wolcott, Colorado, in the temporary absence of the regularly assigned agent.

During the period the Avon agency was declared abolished, November 15, 1940, to May 1, 1941, the Carrier maintained two telephone booths in the freight yard at Avon immediately adjacent to the Avon station, and per-

We wish to stress that part of the Opinion reading:

"We think it clear that the Scope Rule of this agreement was not intended to prevent a section foreman getting his lineups by telephone. Should we hold otherwise, it would be necessary to maintain a telegrapher wherever lineups are found to be necessary, and clearly such a requirement was not within the contemplation of the parties at the time the agreement was signed."

and further:

"If, as contended by Employees; no one except a telegrapher should be permitted to use the telephone to obtain train lineups from other telegraphers at stations where a telegrapher is employed, we are of the opinion that such a requirement is not to be found in the Scope Rule of the agreement but may be found only in a specific agreement of the parties of the same type as that deemed necessary in this agreement relating to train orders, and found in Rule 2 of the agreement."

and it might also be added that such a requirement is not only not to be found in the Scope Rule of the agreement, but may be found only in a specific agreement of the same type as that deemed necessary by the Organization when they requested and secured a new rule, in the Mediation Agreement of May 13, 1940 (Case No. A-757), relating to the handling of train orders, etc., by train and enginemen.

The Carrier submits that a consideration of all the evidence, the previous conduct of the parties, and the practical and economic considerations bearing upon the meaning of the agreement and its application to the facts, fully sustains the Carrier's position, and respectfully requests that the claim be denied.

OPINION OF BOARD: The record is not sufficiently adequate or definite to enable the Board to pass on the merits of this dispute.

A joint statement is requested from the parties in answer to the following question:

How were freight shipments received and forwarded from Avon and surrounding territory and how were milk and cream shipments forwarded from Avon and said territory following the Order of the Public Utilities Commission of the State of Colorado, dated November 4, 1940, as compared with the method of handling said business prior to said Order?

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 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 the case must be remanded for additional information.

AWARD

Case remanded for information requested in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1942.