

Award No. 1791

Docket No. TE-1786

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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 (a) that the practice of the carrier in permitting and/or requiring Section Foremen to regularly secure line-ups or positions of trains by telephone direct from the dispatcher at Copan, Oklahoma, listed as small non-telegraph agency, is in violation of the telegraphers' agreement and shall be discontinued; (b) that the existence and use of telephone at Copan, Oklahoma, for communication purposes classifies that position as agent-telegrapher position and entitles the incumbents to retroactive reimbursement as such since its improper classification as small non-telegraph agent; 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, copies of which are on file with the National Railroad Adjustment Board.

The Telegraphers' Schedule, effective February 5, 1924, as to rules, and April 1, 1925 as to rates of pay, on page 21, lists at Copan, Oklahoma an agent-telegrapher position, rate 66¢ per hour. Effective January 1, 1928 the rate was, by agreement, increased to 69¢ per hour. An increase of 5¢ per hour effective August 1, 1937 would make said position 74¢ now.

Effective September 1, 1932 the carrier without conference and agreement removed the agent-telegrapher position at Copan, Oklahoma from the Telegraphers' Agreement, substituting therefor what it chose to term a "resident agent." Award No. 255 of the National Railroad Adjustment Board, Third Division, held such action to be violative of said agreement.

By agreement October 28, 1936, following the issuance of Award No. 255, the agency at Copan was restored to the Telegraphers' Agreement, effective November 1, 1936, with a classification of small non-telegraph, rate of pay 51¢ per hour. Said rate was increased to 56¢ per hour effective August 1, 1937. (See page 31 of current Wage Scale.)

Telegraph and/or telephone facilities were removed from the depot building to a booth or some other type of building adjacent the depot. Section foremen are required and/or permitted to regularly make use of such telephone facilities in securing direct from train dispatchers, line-ups or positions of trains, during or outside of the agent's assigned hours.

telephone for the purpose of obtaining from the dispatcher information as to the location of trains; and for a period of more than four years prior to April 11, 1941 there had been no change whatever in the duties, responsibilities or classification of the agent at Copan. It thus becomes evident that nothing whatever occurred on or shortly prior to April 11, 1941 upon which this claim can be based. When the Employees agreed on October 28, 1936 that the agent at Copan, Oklahoma should be classified as small non-telegraph, they did so in the light of the fact that the section foreman, for a period of more than four years prior to that date, had been making daily use of the telephone for the purpose of obtaining from the dispatcher information as to the location of trains. When they made that agreement they bound themselves to the proposition that such use of the telephone by the section foreman was not prohibited by the then effective Telegraphers' Schedule nor by the agreement they then made; and they again bound themselves to that proposition when they negotiated and executed the agreement of December 1, 1938, which continued the classification of the agent at Copan, Oklahoma as small non-telegraph, and at which time the use of the telephone by the section foreman for the purpose stated had been effective for more than six years.

It is noteworthy that the Organization has not cited any Article or section thereof of the Telegraphers' Schedule as having been violated. On the contrary, the basis for the claim is said to be Awards Nos. 1261, 1284 and 1303 of the Third Division of the Board. Reliance upon those Awards is reliance upon error, because such awards were not rendered upon the agreement between the parties and the circumstances and conditions surrounding the negotiation of such agreement, upon which basis the facts in the instant dispute must be resolved.

The Carrier has proven beyond even reasonable doubt that there has not been a violation of the Telegraphers' Schedule as alleged in part (a) of the claim of the Organization but that the matter there complained of has been carried on and continued with the knowledge and by the consent of the Organization and has been endorsed and acquiesced in by it in the granting of its request that Copan be classified as small non-telegraph agent and the agreements to continue such classification; therefore, parts (b) and (c) of the claim are also nullified and the claim in its entirety must be denied. In any event, the claim is subject to provisions of Article V (i) of the Telegraphers' Schedule, effective December 1, 1938.

OPINION OF BOARD: The controlling facts in the instant case cannot be distinguished from those in Award Nos. 1261, 1303, 1284 and 1612. The agreements involved are the same agreements. We have carefully considered each prior award and the facts and agreements upon which each is based and conclude that this claim can be denied only by reversing the prior awards made by three different referees. We refer to memorandum of Referee Garrison accompanying Award No. 1680. The essentials set out in that memorandum are accepted.

Reparation should be limited as provided in Article V (i) of the agreement dated December 1, 1938. See Award Nos. 1075 and 1076.

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 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 under the holdings of prior awards of this Board the claim should be sustained.

AWARD

Claim sustained with reparations limited as provided in Article V (i) of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942.

DISSENT TO AWARD NO. 1791—DOCKET NO. TE-1786

Reference is made to dissent to Award No. 1752 in a similar dispute between the same parties, which represents our dissent to the instant award.

/s/ R. H. Allison
/s/ C. P. Dugan
/s/ R. F. Ray
/s/ A. H. Jones
/s/ C. C. Cook