

Award No. 2928
Docket No. TE-2934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Rock Island and Pacific Railway that, the first trick telegrapher at the Kingfisher, Oklahoma, telegraph office, whose assigned hours are 8:15 A. M. to 4:15 P. M., shall be paid for a call under Article 4-(c), second paragraph, of telegraphers' agreement, on July 16, 17, 18, 19, 21, 22, 23, 24, 26 and 27, 1941, on which dates the second trick telegrapher in the same office, by direction of the Carrier, left train orders copied by him prior to going off duty at 5:00 A. M., on the train register to be picked up by the train crew to whom addressed at 7:30 A. M., thereby depriving the first trick telegrapher of the performance of the work of delivery of the train orders which work was properly his, and for which he was entitled to the payment of a call in each instance.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date January 1, 1928, as to rules and working conditions and rates of pay is in effect between the parties to this dispute. On page 44 is listed Kingfisher with one agent, whose duties at that time did not include telegraphing, and three telegraph positions, covering the twenty-four hour period. Subsequently the force was reduced to include one agent-telegrapher with assigned hours 8:15 A. M. to 4:15 P. M., and one telegrapher 9 P. M. to 5 A. M., seven days per week.

During the period July 16 to July 27, inclusive, 1941, a work train was employed in the vicinity of Kingfisher, the crew of which began work at 7:30 A. M. during a time no telegrapher was on duty. In order to evade the payment of overtime to agent-telegrapher J. F. Henry, the Carrier instructed that all orders and clearance cards required by Work Extra 374 before starting on its day's work, be prepared by the second shift telegrapher before going off duty at 5:00 A. M., and leave on the train register to be picked up by train crew of Work Extra 374 at 7:30 A. M.

Claims were filed by Telegrapher Henry for one call on each of the days he was not privileged to perform the work of making delivery of the orders in the usual manner at his station. The Superintendent denied the claims and appeal was taken to higher officers who sustained the decision of the Superintendent.

POSITION OF EMPLOYES: The rules of the agreement invoked in this dispute are as follows:

SCOPE

"The following rules and rates of pay will govern the employment of telegraphers, telephone operators (except switchboard operators), *printer

place upon this particular rule an entirely new and different construction of its proper application and interpretation, disregarding all of the history of the negotiations and records over a period of some twenty-eight (28) years, disregarding the actual practice followed and disregarding the total and complete absence of any similar request in the past. He now comes to this Board asking for support of his recent and new, as well as different, interpretation of a rule. Not a rule in the Telegraphers' Agreement on the Rock Island Railroad, even though it has been in the working rules agreement between the Telegraphers and this Carrier since November 1, 1903, the date of the first working rules agreement with the Telegraphers, and has been uniformly applied and followed throughout the entire period up to this date, can safely be accepted by the Carrier as actually constituting an agreement between the Telegraphers' Organization and the Carrier if such rules are subject to change in interpretation without change in the language of the rule, or if a request for a change in the application of the rule may be submitted to this Board and such new and completely different interpretation upheld.

OPINION OF BOARD: In all essential features this dispute is identical with that presented in Docket No. TE-2932, Award No. 2926. For the reasons stated in that award, the claim in the instant case is 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 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 Carrier violated the current Agreement as alleged by Claimant.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1945.

Dissent to Award 2926, Docket TE-2932
Dissent to Award 2927, Docket TE-2933
Dissent to Award 2928, Docket TE-2934
Dissent to Award 2929, Docket TE-2935
Dissent to Award 2930, Docket TE-2936

Dissent filed to Award 1713 reflects our position then and now with respect to the provisions of Article 1(b), in substance the same as Article XIII, there involved.

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