

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Railroad, that:

(1) the Carrier violated Rule 2-(f-2) of the Telegraphers' Agreement, when, on February 16, 1943, it arbitrarily and improperly reclassified the position of agent-telegrapher at Baker, Kansas, to agent-restricted operator, and, without conference and agreement with the General Committee, arbitrarily reduced the rate of pay of the position from 77 cents to 65 cents per hour; that:

(2) the classification of agent-telegrapher and the contract basic rate of 77 cents per hour shall be restored to the position retroactively to the date they were improperly changed, and the incumbent of the position be retroactively reimbursed for the difference; and that:

(3) a call accruing to the position on each day during the period February 16, 1943, through July 22, 1943, shall be paid the incumbent of the position in accordance with the provisions of Rule 1-(b) of the Telegraphers' Agreement, on account of train orders handled at Baker by employees not under said agreement during said period.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date June 1, 1942, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

The position of agent-telegrapher at Baker, Kansas, involved in this dispute is covered by said agreement, and at the basic rate of 77 cents per hour.

The basic rate of 77 cents per hour was fixed for this position on June 1, 1942, by mutual agreement between the parties with due regard to conditions existing on the position as of that date, the effective date of the telegraphers' agreement, as set forth in Rule 2-(f-2) of said agreement.

Without substantial decrease in the duties and responsibilities of the position of a permanent nature having continuously accrued on the position since June 1, 1942, the Carrier arbitrarily reclassified the position on February 15, 1943, to that of agent-restricted operator; and without conference or agreement with The Order of Railroad Telegraphers, party to the telegraphers' agreement, unilaterally reduced the rate of pay of the position by fixing a rate of 65 cents per hour.

Coincidental with this arbitrary reclassification of the position, the Carrier, acting alone, transferred the work of the position of handling train orders at the Baker office to employees not under the agreement, February 16, 1943, to July 22, 1943, both inclusive, for which a call is claimed for the incumbent of

Clearance, addressed in same manner as train order, will be sent with delivery orders."

The orders were issued to the pusher crew at Falls City—a train order telegraph office. They were transmitted by the Dispatcher at Atchison to the telegraphers at Falls City who made the manual delivery of the orders to the train crew. As matter of fact, the delivery of these orders by the telegraph operators at Falls City was to the same crew that made the return trip from Baker and the orders delivered to the crew at Falls City governed its return movement from Baker to Falls City.

The Management denies the contention of the Employees that the handling of these train orders at Falls City violated in any manner whatsoever the provisions of Rule 1 (b) of the agreement between the Carrier and the Telegraphers' Organization dated June 1, 1942.

OPINION OF BOARD: The facts show that Carrier attempted to discontinue Baker as a train order office and reclassified its position of Agent-Telegrapher to Agent-Restricted Operator. The Organization contends that it transferred the work of handling train orders to employees not under the Agreement so that the reclassification was improper. This presents two questions. First, after the reclassification did Carrier use unauthorized methods in handling train orders; and, Second, was the reclassification in compliance with the Agreement?

It was the custom of Carrier to use a pusher engine on the heavily loaded trains going from Falls City, Nebraska, to Baker, Kansas. At Baker the pusher engine was cut off and returned to Falls City.

Before the reclassification the helper crew received its train orders to run extra to Falls City from the Agent at Baker. After the reclassification such train orders were daily delivered to the conductor of the road crew at Falls City who in turn delivered the orders to the helper crew after the train reached Baker. This practice violated the Agreement as this method of delivering train orders is unauthorized. In Award 2926 recently handed down Judge Carter reviewed previous awards about the meaning of the phrase "to handle train orders" and held it was now settled that such phrase included their delivery. Awards 1456 and 2087 involved instances of delivering train orders to helper crews, the same as here, and held the method employed in this case was unauthorized. Such must be the ruling in this case and Claim (3) must be sustained.

On the question of reclassification the following rules are involved:

"RULE 2. (f-2)

"The rates of pay, either hourly or monthly herein tabulated, are fixed with due regard to conditions existing as of the effective date of this agreement, but it shall not preclude the reclassification of agents or agent-telegraphers to that of small non-telegraph agents where substantial decreases in the duties and responsibilities of a permanent nature continuously accrue for a reasonable period; neither will it preclude the changing in classification of positions and adjustment in rates of pay to meet substantial changed conditions of a permanent nature for a reasonable period that require increased or decreased duties and responsibilities of employees. Where positions are reclassified rates of pay established therefor shall be fixed in conformity with Rule 2-(b) by agreement between the parties of this agreement."

"RULE 2. (b)

"When additional positions are created the rate of pay will be fixed in conformity with positions of the same class as shown in wage scale on the seniority district where created, except that in offices where two or more telegraphers are employed (not counting the agent or agent-telegrapher as one of the two) the rate of pay will not be less than the lowest rate in that office."

"RULE 2. (c)

"At small non-telegraph or non-telephone agencies it will be permissible at the option of the carrier to require the agent to handle West-

ern Union service, railroad communication service confined exclusively to the transmission of car orders and securing reports on the probable arrival of trains for bulletin board information. Where such service is exacted the classification of the agent will be identified as agent-restricted operator and rated 65c per hour.

"NOTE: It is agreed that the communication service herein provided for does not permit of the handling of train orders and railroad messages of record, the OS'ing of trains and other communications ordinarily handled as between telegraph operators and telegraph operators and dispatchers, except in an emergency; in the latter case the rate of pay for that agency for the day shall be the minimum rate for telegraphers on that division.

It is clear from Rule 2 (f-2) that if the conditions contained therein are observed the Carrier has the right to reclassify positions without first coming to an agreement with the Organization. However that rule does require an agreement between the parties about the rate of pay to be established for the reclassified position. While such requirement is apparently of general application the parties have made an exception to it in the case of an "agent-restricted operator" for whom, under Rule 2 (c) they have already established and agreed upon the rate of 65 cents an hour as therein set out. Under the latter rule no further agreement is necessary in such cases. The question is not before us and we do not rule that the propriety of a reclassification as agent-restricted operator may not be contested by the employees.

A condition precedent to reclassification under Rule 2 (f-2) is that the position has suffered a "substantial decrease in the duties and responsibilities of a permanent nature." The reclassification of the position at Baker was based on the decrease in the duties and responsibilities because of its discontinuance as a train order station. But we find it continued to be used as a train order station as the handling of train orders there was transferred to other employees not under the Agreement. It is obvious the Agreement does not contemplate that a decrease in duties procured in such a manner justifies a reclassification. A reclassification thus obtained is improper.

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 the Carrier violated the Agreement.

AWARD

Claim (1) sustained in conformity with opinion;

Claims (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1945.