Award No. 3050

Docket No. TE-3021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 Maxine Dunlap be compensated at the same rate as paid employes whom she relieved, November 16, 1942 to February 15, 1943, while working in the Carrier's General Telegraph Office, San Francisco.

STATEMENT OF FACTS: 1. There is an agreement in effect between the parties to this dispute and this agreement is on file with the Board.

2. The claim is prosecuted under Rule 4(b) of the agreement in effect, which is quoted for ready reference:

"RULE 4.

Basis of Pay

(b) Telegraphers will receive the same compensation in relief service as the telegrapher they relieve."

3. EXHIBITS "A" to "H" inclusive are attached to and made a part of this brief.

4. The Claimant during the period covered by this claim was an unassigned extra employe and was used in relief service in the Carrier's General Telegraph Office, San Francisco.

5. She was originally correctly compensated for this service in accordance with the Rule.

6. On March 4, 1943, she was given notice that her rate of pay for the period involved was being revised and that $26.88 would be withheld from her earnings.

POSITION OF EMPLOYES: I. The revision of the rate and subsequent deduction made by the Carrier is erroneous.

II. The Claimant was used in relief service as provided by Rule 4(b) of the Telegraphers' Agreement and should be compensated accordingly.

(a) There is no proper basis for any other rate of compensation.

(b) The Memorandum of Agreement dated September 5, 1929 does not modify or supersede Rule 4(b).

ARGUMENT OF COMMITTEE: 1. The revision of the rate and subsequent deduction made by the Carrier is erroneous.

printer clerks were so compensated, whether occupying regular assignments or engaged in relief or extra service.

(2) That by virtue of the agreement of September 5, 1929, wage rates for printer clerks (punchers), according to experience, whether occupying regular assignments or employed in relief or extra service, were established as a matter of agreement.

(3) That is was the intention of the parties to the agreement of September 5, 1929 (petitioner and carrier), that the said agreement would completely and exclusively establish the wage for printer clerks (punchers) according to experience, whether occupying regular assignments or engaged in relief or extra service, and that the said agreement of September 5, 1929, modified Rule 4 (b) of the agreement insofar as is being applicable to printer clerks (punches) engaged in relief or extra service.

The carrier therefore asserts that the alleged claim in the instant case is entirely without merit and should be denied.

OPINION OF BOARD: Claimant was used as a relief puncher in the San Francisco General Telegraph Office at various times from November 16, 1942 to February 15, 1943. She was paid her experience rate of 70 and 75 cents per hour for this relief work. The claim is that she be paid the rate of 80 cents per hour, the experience rate of the punchers regularly assigned to the positions on which she performed the relief work.

Claimant contends that the dispute is controlled by Rule 4 (b) of the current Agreement providing:

"Telegraphers will receive the same compensation in relief service as the telegrapher they relieve."

Carrier urges that the controlling rule is contained in Paragraph (e) of Memorandum of Agreement of September 5, 1929, the applicable portion thereof being as follows:

"Subject to change, punchers shall be paid 55c to 65c per hour, according to experience, when used on either the punching or receiving side of duplex and/or multiplex automatic tape printer machines."

We are of the opinion that Rule 4 (b) of the current Agreement controls the disposition of this case. This conclusion is based largely on our previous holding in Award 1534 which, in part, said:

"The argument of the Carrier is logical and consistent but supporting proof is lacking of specific modification of Rule 4 (b).* * * Had the parties intended to modify Rule 4 (b) they should have done so by explicit language for we cannot read additional modifying language into the the agreement between the parties."

The Carrier urges, however, that the holding of this award should no longer be adhered to. The Carrier points out the language of that award as recognizing inconsistencies in it. The language referred to is:

"The argument of the Carrier is logical and consistent but supporting proof is lacking of specific modification of Rule 4 (b). In the absence of such modification by agreement of the parties we are forced to apply the provisions of Rule 4 (b) and arrive at the somewhat inconsistent result that claimant although not qualified as a Morse telegrapher who relieved one then performing the work of a telegrapher (puncher) is nevertheless entitled to receive the same compensation for this relief service as the Morse telegrapher he relieved."

Carrier urges that the supporting proof found to be lacking in Award 1534 has been supplied in the confronting docket and, consequently, a contrary result should follow. We must point out, as indicated in Award 1534, that any inconsistencies resulting from that award are the result of the

definite provisions of the two agreements being construed and are not the result of insufficient evidence or faulty interpretation. Where the contract is plain and unambiguous, no basis for construction exists. To so do would constitute contract making rather than contract interpretation. If, under such a situation, the plain and unambiguous provisions of the agreement do not represent the intention of the parties to it, negotiation affords the only remedy. We necessarily conclude that Section (e) of the Memorandum of Agreement of September 5, 1929, deals solely with the bulletining of new positions and filling vacancies, leaving unimpaired the relief rule contained in the current Agreement. An affirmative award is required.

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 parties waived oral hearing hereon;

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 the action of the Carrier in the confronting case constitutes a violation of Rule 4 (b) of the current Agreement.

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 December, 1945.