

Award No. 3372

Docket No. TE-3195

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana that the rate of pay for the position of Agent at Angleton, Texas be adjusted by adding four cents per hour to the present rate of 92 cents thereby creating a rate of 96 cents per hour, effective July 1st, 1943.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective October 15, 1940 is on file with the National Mediation Board.

Prior to July 1, 1943 the commercial telegraph business for Angleton was handled by the agent and telegraphers of the Missouri Pacific and a commission was paid to the Agent for this service.

On July 1, 1943, the Western Union Telegraph Company established an uptown office at Angleton and the handling of commercial telegraph business at the railroad office was discontinued. This resulted in decreasing the compensation of the agent an average amount of \$15.00 per month.

POSITION OF EMPLOYES: The claim is based on Section (a) of Rule 26 which reads:

Rule 26

**COMMISSIONS ON COMMERCIAL TELEGRAPH
AND EXPRESS**

- (a) When express or commercial telegraph commissions are discontinued at any office, thereby reducing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions.
- (b) Employees will not be required to serve the Railway Express Agency at less rate of Compensation than is now being paid. Complaints by employees against the Railway Express Agency will be handled through their General Committee, and the Management of the Carrier will handle complaints with the Railway Express Agency.
- (c) Complaints by employees concerning commercial telegraph company will be handled through their General Committee and the Management will handle such complaints with the telegraph company for adjustment.

Referee Garrison in making reference to a similar rule, Award 218 states:

| Station | Rate |
|--------------------|------|
| Bloomington | 0.89 |
| McFaddin | 0.87 |
| Refugio | 0.84 |
| Woodsboro | 0.89 |
| Calallen | 0.86 |
| Driscoll | 0.86 |
| Bishop | 0.94 |
| Sarita | 0.86 |
| Raymondville | 0.84 |
| Lyford | 0.84 |
| Sebastian | 0.84 |

Average rate 88.5 cents per hour

* Terminal point

It will be noted from the above statement that the average rate paid Agent-Telegraphers on the Kingsville Division, including the \$1.01 rate paid at Vanderbilt, a terminal point, is 88.5 cents; that the rate of 92 cents paid the Agent-Telegrapher at Angleton is 3.5 cents per hour higher than the average rate paid on positions of Agent-Telegrapher on this same division; and that at only three of the 21 stations listed above is the rate higher than the rate at Angleton.

Paragraph (a) of Rule 26, quoted above was prompted by the fact that in some instances the establishment of hourly rates for Agent-Telegraphers and Telegraphers at the smaller stations was governed to some extent by the amount of Express and Western Union commissions received by the occupants of such positions, that is, where these commissions were of such an amount as to make the earnings of employees at those stations out of proportion with the earnings of similar employees at other stations in that territory, the hourly rates for these positions were in some instances established on a lower basis. Therefore, the intent and purpose of paragraph (a) of Rule 26 was to provide, in the event of an appreciable decrease in earnings as a result of the discontinuance of express or commercial telegraph commissions, for adjustment of the hourly rates to conform to the rates paid on other similar positions.

When consideration is given to the provisions of Rule 26, paragraph (a) of the Telegraphers' Agreement, together with the fact that the rate of pay of the Agent-Telegrapher at Angleton is 3.5 cents per hour higher than the average rate paid on positions of agent-telegrapher on the same division, it is clearly evident that the rate of 92 cents an hour paid on the position of Agent-Telegrapher at Angleton more than conforms to rates paid for similar positions on the Kingsville Division, and, therefore, no adjustment is due on that position under the provisions of paragraph (a), Rule 26.

In view of the above, it is the position of the Carrier that the facts and circumstances involved in this case definitely and conclusively preclude any basis or justification for the contention and accompanying claim of the Employees, and, therefore, the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: Prior to July 1, 1943, the Western Union messages at Angleton, Texas, were handled by First Trick Telegrapher-Leverman and his commissions averaged about \$15.00 per month. Effective that date the Western Union established an uptown office and discontinued using the First Trick Telegrapher-Leverman as its manager, and the Petitioner claims that the agent's rate of pay should be adjusted to compensate him for the loss of Western Union commissions, under Rule 26 (a) of the Agreement.

That rule reads:

"(a) When express or commercial telegraph commissions are discontinued at any office, thereby reducing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions."

The Claimant Agent prior to July, 1943, was the Station Agent and did not handle any western Union messages, nor was he paid commissions therefor. Therefore, the Agent was not affected by this change and the claim as presented should be denied.

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 Employee involved in this dispute are respectively carrier and employe 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.