

Award No. 3373
Docket No. TE-3213

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 for the position of Agent at Sweeny be increased in the amount of eight (8) cents per hour for the period July 7, 1942 to November 1, 1944. and a monthly rate of \$283.40 be established for the position, effective as of November 1, 1944.

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

At the time this agreement was signed, Sweeny was a small one man station. The only employe at the station was an agent-telegrapher. The position was rated at 72 cents per hour which represented the average going rate for positions of the class.

Subsequent to 1940 there was a large increase in the business of the Carrier due to oil developments and construction of refineries at Sweeny.

The agent, Mr. E. L. Slay, requested that his compensation be adjusted commensurate with the additional duties involved.

Carrier declined to take cognizance of the situation.

POSITION OF EMPLOYES: In order that the Board may have a clear conception of the entire subject matter it is necessary that we quote a portion of the correspondence, and cite the following letters.

Sweeny, Texas, April 5, 1942.

Mr. J. M. Bruce,
San Antonio, Texas.

Dear Brother Bruce:

I am writing this letter to let you know something about my job and whats to be done here within the next few months.

As you know J. S. Abercrombie Co. have a gasoline plant here that is turning out around 240 to 250 cars per day. This is natural gasoline or what is known as "Semi Casing head". It's not a pure casing head as it's Semi refined. They are adding about one million

handled at that station the occupant of this position was relieved of the telegraph service formerly performed by him. He continued to perform the duties of an agent minus the telegraphic service, and while he may have had more straight agent's duties to perform than previously, he was not assigned to perform any work not properly assignable to and commonly performed by agents. The most that can be said is that he performed more of the straight agent's work and less, if any, of the telegrapher's work. The Carrier has also shown that following the increased business at Sweeny in 1943 the station force at that point was increased by four positions to take care of the additional work resulting therefrom, and when it became apparent that the increased earnings shown at this station would continue for some time, the rate of pay of the agent was increased from 91 cents an hour to \$253.40 per month in compensation for his increased responsibility. In the light of the above, it is obvious that Paragraph (a) of Rule 33 is not involved in the case under consideration. However, assuming but denying that Paragraph (a) is applicable to the situation here involved, and further assuming that the Carrier had not increased the rate of the position, the claim as presented by the Employees for an increase of 8 cents an hour from July 7, 1942 to October 31, 1944, and a monthly rate of \$283.40 effective November 1, 1944 would not be supported by that rule. That rule only provides, in the event of assignment of duties to a position other than those properly coming under the classification of the position, that the question "may be handled by the employees through their committee for an adjustment of rate of compensation on account of the changed conditions." In other words, in situations such as contemplated in Paragraph (a) the matter may be handled through the committee for adjustment, but there is nothing in the rule to support the Employees' request for an increase of 8 cents an hour from July 7, 1942 to October 31, 1944, and the establishment of a monthly rate of \$283.40, effective November 1, 1944. And, further assuming that this rule was applicable in this case, any increase in the rate of pay of the position would be a matter of negotiation between the parties and not a function coming within the jurisdiction of the Board.

In this connection, attention of the Board is directed to the fact that in the handling of this case with the Carrier, no request was made for an increase of 8 cents an hour on July 7, 1942; that the first request for an increase of 8 cents an hour, or from 82 cents to 90 cents, was first presented with the General Chairman's letter to the Assistant General Manager under date of August 19, 1943, more than a year later. And attention of the Board is also directed to the fact that in the handling of this case with the Carrier no specific request was made that a monthly rate of \$283.40 be established on the position, the request being that the rate should be increased due to the increased earnings, the additional force under the agent's supervision and the accompanying increased responsibility.

The Carrier has shown that the rate of the position in question was increased from 82 cents an hour (the rate of the position at the time this dispute originated) to 91 cents an hour; and from 91 cents an hour to \$253.40 per month subsequent to July 7, 1942, the date of the General Chairman's first letter to the Assistant General Manager requesting an adjustment in the rate of pay of the position of agent at Sweeny.

In the light of the foregoing, it is the position of the Carrier that the claim set forth in the Employees' Statement of claim is not only without basis in equity but is without foundation under the rules of current agreement between the Carrier and The Order of Railroad Telegraphers covering rates of pay, rules or working conditions effective October 15, 1940, and, therefore, the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: The effective date of the Agreement is October 15, 1940, and at that time the only position at Sweeny, Texas, was an Agent-Telegrapher whose rate of pay was 72 cents an hour. Due to a great increase in the gasoline business and the building of refractories in the territory adjacent to Sweeny the force at that station was increased as follows:

Telegrapher-Clerk in November, 1942
Cashier in February, 1944
1 Telegrapher in March, 1944
1 Telegrapher in July, 1944
Yard Clerk in July, 1944

The rate of pay of the Agent-Telegrapher in July, 1942, was 82 cents* per hour; effective December 27, 1943, it was increased to 91 cents per hour. With the addition of the third Telegrapher in July, 1944, the title of the Agent-Telegrapher was changed to that of Agent. Effective April 16, 1945, the rate of this position was changed to \$253.40 per month.

The above facts are a brief summary of the facts disclosed by the record.

The Claimant relies upon Rules 2 (e), 24 (b) and 33 (a). The Claimant contends that there has been a heavy increase in duties with no corresponding increase in rate of pay.

Rule 33 (a) reads:

"Assignment of duties other than those shown under classification of positions in Rule 37, may be handled by the employees through their Committees, for adjustment of rate of compensation on account of the changed conditions."

When this Agreement was negotiated the position was Agent-Telegrapher and due to increase of business at Sweeny additional employees were added and the occupant continued to be the Agent, but he no longer did any Telegrapher's work. It is true he did more Agent's work than formerly but there was no "assignment of duties other than those shown under classification of positions in Rule 37".

If the Claimant is entitled to an increase in rate of pay, it must be arrived at by negotiation between the parties, for any additional responsibilities that the Claimant assumed on account of increased business of the Carrier at this station.

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 does not have jurisdiction over the subject matter of the dispute involved herein; and

That the claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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