

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad,

(1) That the Carrier violated the provisions of Rule 12(c) of the telegraphers' Agreement, when on March 1, 1945, it unilaterally fixed the rate of 98 cents an hour for the newly created position of operator in "PO" office, 140 Cedar Street, New York City; and

(2) That the basic rate for this newly created position shall be fixed at \$1.05 an hour effective March 1, 1945, in conformity with the provisions of Rule 12(c) of said Agreement, which is the rate fixed by mutual agreement for similar position in the same "PO" office on the same division under the jurisdiction of the same superintendent.

EMPLOYEE'S STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The telegraphers' Agreement lists at page 13 the following positions:

Location	Position	Rate per Hour
140 Cedar Street, New York	Operator	.86
Hoboken, Dispatchers' Office	Operator (1st Trick	.83
Hoboken, Dispatchers' Office	Operator (2nd Trick	.79

The above quoted rates were increased 10 cents an hour during 1941, and 9 cents an hour during 1943, which makes those rates at the beginning of this controversy \$1.05, \$1.02 and .98 respectively. All such rates were further increased by 18½ cents an hour during 1946.

Immediately and for quite some time prior to March 1, 1945, the Hoboken, New Jersey, office employed more operators than listed in the 1940 wage schedule, viz.,

1 Operator assigned 9:45 a.m. to 5:45 p.m. rate \$1.02
1 Operator assigned 12:01 a.m. to 8:00 a.m. rate .98
1 Operator assigned 12:01 a.m. to 8:00 a.m. rate .98

Subsequent to March 1, 1945, that office employed the following:

1 Operator 9:45 a.m. to 5:45 p.m. rate \$1.02
1 Operator 12:01 a.m. to 8:00 a.m. rate .98

it was to their advantage to do so in that case. Here they take a contrary position because they believe it is to their advantage to do so. Certainly, they can not blow hot and cold.

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The rate of pay for the position in question has been fixed in conformity with Agreement rules.

The Carrier denies the work of the position of clerk-operator is similar to work being performed by the operator at 140 Cedar Street, New York City. But even if this were so, it would not be decisive as to this case, where the facts establish a transfer of position rather than the creation of a new position. The "new" element, as we have shown, was merely an arrangement by the Organization to take care of Wilm's seniority.

The Carrier contends there has been no violation of any Agreement rule in respect to the case before your Board and claim should be denied or remanded for negotiations.

OPINION OF BOARD: The record shows that the second trick telegrapher's position with assigned hours 1:00 a.m. to 9:00 a.m. in "PO" Office, 140 Cedar Street, New York, established March 1, 1945, was a new position in fact.

In the establishment of a new position, it is the duty of the Carrier in the first instance to fix the rate therefore, subject to protest. Rule 12(c) provides:

"When new positions are created compensation shall be established in conformity with similar positions on the same sub-district or sub-division under a superintendent's jurisdiction, or in the event there is no similar position on that sub-district or sub-division, then upon similar positions on contiguous districts."

A check made jointly by the parties discloses the work of the newly established position to be similar to a position in the same office, though working different hours. Therefore, the rate should have been established in the manner provided for in Rule 12(c).

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 employee 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 record shows the position in question was a new position in fact, and a joint check of the work performed shows the work to be similar to an existing position in the same office. Therefore, as provided for in Rule 12(c), the claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1947.