

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO & SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Colorado & Southern Railway, that the agency position at Grenville, New Mexico, was not abolished in fact, when on March 27, 1942, the Carrier, acting alone, discontinued the agency position and employed a so-called caretaker in lieu thereof to perform the agency work at the rate of \$25.00 per month at this station; and that W. E. Spencer, the regularly assigned agent at Grenville, who was thus improperly removed from his position, shall be restored to his former position and paid for all loss of wages suffered, including express commissions and for all rent, coal, gas and lights he has had to purchase elsewhere, since March 27, 1942, the date he was improperly removed from his position.

EMPLOYEES' STATEMENT OF FACTS: There is in effect and in evidence an agreement bearing effective date of June 16, 1924, between The Order of Railroad Telegraphers and the Colorado & Southern Railway Company, copies of which are on file with the National Railroad Adjustment Board. At page 19 of the agreement there is listed the Grenville agent-telegrapher position, rate 58 cents an hour, the present rate being \$1.02½ an hour.

Grenville, New Mexico, station is located on the main line of the Southern Division of the Colorado & Southern Railway Company. For many years prior to March 27, 1942, an agent-telegrapher was employed at Grenville.

By Supreme Court Order No. 4627 of the State of New Mexico, filed November 21, 1941, the Colorado & Southern Railway Company was granted permission to discontinue its agent-telegrapher position at Grenville and substitute therefor a caretaker, with the understanding that he would have definite duties as set out in the Order and during the same hours as the agent whom the caretaker would supplant. The agent-telegrapher position was discontinued March 27, 1942, and a caretaker or custodian was installed in his stead.

POSITION OF EMPLOYEES: We believe the following rules to be pertinent in connection with this dispute:

"RULE 10—Regular assigned telegraphers will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays."

"RULE 24 (a)—When reduction in force is necessary, division seniority will govern, and an employe so reduced will have the right

There is very little express business handled at Grenville. The commissions paid by the Express Agency to the custodian do not average over \$3.50 per month. Express shipments from Grenville will not average one per month. Express shipments received at Grenville average far less than one a day. The time devoted by the custodian in the handling of this express business will not average more than five or ten minutes per day, including the making out of a few small monthly reports.

Referring to that part of the claim which requests that W. E. Spencer be paid for "all rent, coal, gas, and lights he has had to purchase elsewhere":

There is no rule in the agreement to support such a claim. The Carrier is not obligated under the Telegraphers' Agreement to pay for rent, coal, gas, and lights.

Under Rule 23 of the agreement, the Company is to provide free living quarters, water, fuel, and light at "isolated" points where living quarters cannot be otherwise secured. Rule 23 reads as follows:

"The Company will provide free living quarters, water, fuel and light for employes covered by this agreement at isolated points where same cannot be otherwise secured."

As previously stated, Grenville is a small town. It is not an "isolated" point. Living quarters, etc. can be secured in Grenville. The Company is not obligated to furnish living quarters at Grenville. Therefore, that part of the claim should be denied.

The Employes did not handle a claim for "all loss of wages suffered, including express commission," in presenting this claim or in discussing the claim with the officers of this Company. Therefore, that part of the claim should be denied.

As shown above, when the Carrier closed the station at Grenville and abolished the position of agent-telegrapher, it removed all station work from Grenville and there was, therefore, no violation of the Agreement.

When the Carrier assigned a custodian to perform "special work," there was no violation of the Agreement. Therefore, Telegrapher W. E. Spencer, whose position was abolished, was not improperly removed from that position, and the request that he be restored to that position should also be denied.

OPINION OF BOARD: A close reading of the record in this case discloses that the "custodian" of the Grenville station is regularly performing some of the same functions the "agent" used to perform; is performing others on a reduced scale; is performing still others occasionally; while the principal functions have been transferred elsewhere.

The Board feels it need not particularize at this point. It stands on the generalization above which can be readily verified from the statements of the parties with their attached exhibits.

These generalizations suffice to support the Organization's claim that the Carrier has violated Rule 1 and other pertinent rules of their agreement by turning over an agents' work to a custodian not covered by the agreement.

The Carrier had the right to substitute a custodian for an agent at Grenville, provided the custodian did not carry on as an agent. In this case the custodian did carry on as an agent, with the Carrier's consent. Rule 1 says:

"This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen and agents, except positions of agents at Cheyenne, Fort Collins, Loveland, Longmont, Boulder, Denver and Trinidad. However, in filling vacancies of agents at these seven stations consideration will be given to division employes embraced within this schedule.

(Note)—These provisions will not apply to cases where salaries less than \$30.00 per month are paid to individuals for special service which only takes a portion of their time from outside employment or business."

The Board cannot agree with the Carrier that the note to Rule 1 is governing. The only qualification in that note which the Carrier has shown the Grenville custodian to meet is that she received less than \$30.00 a month salary.

As to the two claims in behalf of W. E. Spencer, the agent at Grenville prior to March 27, 1942:

(1) **That Spencer be restored to his former position and paid for all loss of wages, including Express Agency commissions, suffered since he left Grenville in 1942.**

The Carrier maintains, and the Organization does not refute, that this claim had not been the subject of discussion between the Organization and the Carrier before it was brought before this Board. The law (Railway Labor Act, Title I, Sec. 3 (i)) requires that such claims "shall be handled in the usual manner * * *," before coming to this Board. The "usual manner" of handling includes discussion between the parties. Therefore, the Board will remand this claim to the parties.

(2) **That the Carrier shall pay Spencer's rent, coal, gas and light bills once he left Grenville because the Carrier furnished him with quarters in the station and coal, gas and lights while he was at Grenville.**

This was the first claim in Spencer's behalf sent to the Carrier March 3, 1945 and was repeated November 4, 1946.

The Organization has made no showing that furnishing quarters, coal, gas and light to Spencer was an obligation on the Carrier's part. Without any showing that these things were due Spencer while he was at Grenville—that they were tied in with and an essential part of his agreed compensation—that they were not a gratuity—this Board cannot sustain the Organization's claim that he be made whole for their loss.

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 Rule 1 and other relevant rules of the Agreement.

AWARD

Claim for restoration as agent at Grenville, New Mexico, and made whole for any loss of wages remanded to parties.

Claim for payment of rent, coal, gas and light denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.