

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS, DIVISION 25
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:

(1) That the agent-telegrapher position at East Waco, Texas, declared reclassified by the Carrier on June 16, 1945, to that of non-telegraph agent, was not so reclassified in fact;

(2) That the handling of communications service at that station has not been discontinued, but has either been improperly transferred to employees not covered by the telegrapher's agreement or has been performed by incumbents of the East Waco agency position; and

(3) That the hourly rate fixed by the telegraphers' agreement for the agent-telegrapher position at East Waco shall be applied to the position since June 16, 1945, and those employees who have since occupied the position shall be compensated accordingly.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties effective October 14, 1940 is in effect between the parties to this dispute. East Waco, Texas, was first opened as a non-telegraph agency, rate 72¢ per hour and bulletined as such on April 29, 1944 under bulletin No. 45. On or about June 15, 1944, Assistant Chief Personnel Officer B. W. Proctor called the General Chairman on the telephone and stated that East Waco was being made an Agent-Telegrapher position and wished to agree on a rate of pay which is in line with the agreement. The General Chairman named Malone 83¢, Irene 80¢, Maypearl 83¢ and Penelope 82¢ as being similar stations and we agreed on rate of 82¢ to apply. After our conversation was over the General Chairman again checked the rates and found that we had failed to consider the right rates that were in effect at that time which was Malone 93¢, Irene 90¢, Maypearl 93¢ and Penelope 92¢ and the Assistant Chief Personnel Officer was immediately informed by the following Western Union message:

B. W. Proctor
c/o MoP Lines
Palestine, Texas.

"San Antonio 5, Texas
June 15, 1944

Conversation Waco should be Ninety-Two instead of Eighty-two to compare Irene Malone Maypearl Penelope.

J. M. Bruce."

Tower, and has been so continued and is still being performed by these joint employes.

The Carrier has proved that no telegrams, messages or train orders have ever been transmitted or received over the Carrier's wires at East Waco. Therefore, the claim for the rate of an Agent-Telegrapher at that station is entirely without foundation and should be denied. The Board is requested to so rule.

(Exhibits not reproduced.)

OPINION OF BOARD: East Waco, Texas station, was first opened by the Carrier in April, 1944. In June, 1944, the Carrier informed the General Chairman of the Telegraphers that the station was being made an Agent-Telegrapher position and the rate of pay was agreed upon.

Pursuant to such agreement the position was first bulletined August 1, 1944 as a permanent vacancy in Agent-Telegrapher position. On August 21, 1944, O. M. Brockman, a telegrapher, was assigned to the position. He, however, remained on a temporary vacancy at another station. The position was then bulletined as a **temporary vacancy** Agent-Telegrapher position but no bids were received. It was again bulletined in the same manner on January 23, 1945, and on March 9, 1945, each time being bid in by and assigned to a telegrapher who passed up the position.

On July 8, 1945, the Carrier, without any notice to or agreement with the Organization bulletined the position as a permanent vacancy Agent-Non-Telegrapher position at a reduced rate and assigned C. A. Williams, a telegrapher to fill it.

Since the establishment of the agency in April, 1944, "the telegraphing necessary for the handling of its business" has been performed by telegraphers in the St. L. S. W. Tower, a station included in the St. L. S. W. Schedule, and not a Missouri Pacific Position.

The record seems to clearly indicate that this reclassification and reduction in rate was not because of any change in conditions or work. The Carrier in this record has repeatedly stated that the necessary telegraphing continued to be handled the same from the time of the establishment of the station throughout the entire period. Communications from the station were of such a nature as to be required to be a matter of record. Such communication service is within the Scope Rule of the Telegraphers Agreement.

The Carrier seeks to justify its action in reclassifying this position and in reducing the rate by contending that Rule 3 (r) authorizes the Carrier to reclassify positions and reduce the rates. Rule 24, entitled "Preservation of Rates and Classifications" expressly provides that changes in employes' classification shall not operate to establish a less favorable rate of pay or condition of employment "except by mutual agreement" and further provides that when existing payroll classification does not conform to Rule 1, Scope Rule, employes performing service in the classes specified therein shall be classified in accordance therewith.

The Carrier also seeks to justify its position by saying that the Company telegraph and telephone wires were never connected up in this station. If matters of record were sent over commercial telephones it would still constitute communication service covered by the agreement.

Throughout the record the Carrier has referred to "the telegraphing necessary for the handling" of the business of this office. We must assume that the Carrier in 1944 considered the services of a telegrapher necessary for the regular business of the office or it would not have bulletined the position as a **permanent** vacancy at a rate increased by twenty cents an hour above the rate theretofore paid. We must assume that the Carrier considered the position filled when they assigned Brockman, a telegrapher, because they later bulletined it as a **temporary** vacancy.

In view of the facts disclosed by this record we must hold that this position could not be reclassified and the rate reduced by the unilateral action of the Carrier.

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 the agreement as claimed.

AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1948.