

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway Company—Coast Lines—that the hourly rate of pay for the position of manager-mechanician located in the Union Depot at Los Angeles shall be increased in the amount of twelve cents (12¢) per hour, effective January 1, 1945, as stipulated in that certain agreement negotiated between the Committee and the Carrier at Topeka, Kansas, January 27, 1945.

EMPLOYES' STATEMENT OF FACTS: There is in existence an agreement between the parties to this dispute effective December 1, 1938; an agreement covering the use of employes of the carrier represented by the Organization within the physical confines of the Los Angeles Union Passenger Terminal Company effective April 12, 1939, reproduced in this submission, and an agreement effective January 1, 1945 between the parties relating to increases in hourly rates for employes of the Relay Division of the Carrier, also reproduced herein. In the allocation of positions as provided in the agreement of April 12, 1939, the position of manager-mechanician was filled by an employe within the scope of the general agreement between the parties to this dispute effective December 1, 1938. By agreement between the parties the position of manager-mechanician was placed in the Relay Division as defined in the December 1, 1938 agreement, (Art. XXI) and the rules of the Relay Division apply to such position. The position of manager-mechanician referred to herein is entitled to an increase of twelve (12) cents per hour under the terms of the agreement effective January 1, 1945 and the carrier has failed to and refuses to comply with the terms of that agreement.

POSITION OF EMPLOYES: We believe it of primary importance to quote the agreement of April 12, 1939, omitting the preamble because the preamble has no bearing on the dispute.

"AGREEMENT

between the

**SOUTHERN PACIFIC COMPANY—PACIFIC LINES
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—
COAST LINES
UNION PACIFIC RAILROAD COMPANY—LOS ANGELES DIVISION**

and

THE ORDER OF RAILROAD TELEGRAPHERS

jurisdiction of this alleged dispute, because that dispute is clearly an effort to obtain, from only one of three carriers involved, an increase in a negotiated rate of pay, and is in violation of a binding agreement that such increases may only be obtained through negotiation under the Railway Labor Act, and it again requests that the Third Division decline jurisdiction and dismiss the claim.

The Carrier reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission of The Order of Railroad Telegraphers, or any subsequent oral argument or briefs the Organization representatives may file in this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts giving rise to the instant dispute are not in controversy. April 12, 1939, the three General Chairmen of the Telegraphers on the Southern Pacific, The Atchison, Topeka and Santa Fe and the Union Pacific entered into an Agreement with said carriers concerning the employment of members of the Telegraphers organization in the operation of the Los Angeles Union Passenger Terminal. At that time it was anticipated that the Terminal would be placed in service on or about May 7, 1939.

The first paragraph of the body of that Agreement provided:

"1. Employees of each of the three railroads will, in Union Terminal service, perform work indiscriminately for each of the railroads and the Union Terminal, under the general direction of the Superintendent. They will, however, except as hereinafter provided, when so serving, be carried on Union Terminal pay roll, but will continue under the provisions of the working agreement of their respective parent line, and their status thereon and employee relationship are not in any way changed by reason of any provision of this agreement."

The Agreement then went on to provide for apportionment of positions among employees of the three Carriers, allotments in initial assignment, rates of pay, assigned hours, meal periods and handling of grievances. The position of Manager-Mechanician at the Terminal was allotted to the Santa Fe and, by letter agreement between the Carrier and the Employees, was filled by an employee from the Relay Division to which it was, also by agreement, considered permanently assigned. January 27, 1945, the Carrier entered into Memorandum Agreement providing for an increase in rates of pay of classifications of Telegraphers; the pertinent paragraph of which reads as follows:

"(1) In offices under the Relay division, established rates of pay of Managers, Wire Chiefs, Assistant Wire Chiefs, Traffic Chiefs and Printer Clerks shall be increased 13¢ per hour in the Chicago, Topeka, Amarillo and Los Angeles offices, and 12¢ per hour in other offices under the Relay division. Managers now paid a monthly rate shall be increased on the basis of 243-1/3 hours per month."

The Carrier has not applied the increase of 12¢ per hour to the position of Manager-Mechanician at the Los Angeles Union Passenger Terminal and the Employees bring this claim. Thus the question of the applicability of the 1945 Agreement to positions at the Los Angeles Union Passenger Terminal is presented to this Board.

It is our view that the Agreement of April 12, 1939 was a separate, joint, and distinct agreement among six parties, into which the provisions of three separate collective bargaining agreements were incorporated by reference, as to all matters not specifically provided for in the joint agreement. The said joint agreement superseded the provisions of the three existing collective bargaining agreements and governed as to all matters in conflict therewith. For example, the starting times in the joint agreement were different from the three collective bargaining agreements and the

joint agreement provided for a twenty-minute meal period where two or more shifts were worked, whereas the Santa Fe Agreement provided for no allowance for meals to employees where two or more shifts were worked. As to these matters, of course, the provisions of the joint agreement controlled over the three separate agreements. So too, with respect to rates of pay set up in the joint agreement. We believe that this concept of a definitely distinct joint agreement is evidenced by the manner in which the rates for chief Towermen and Towermen were adjusted in 1940. At that time, as appears from the record, the Organization invoked the service of the National Mediation Board in a dispute concerning rates of pay of said classifications and it was finally settled by agreement with all three carriers even though the Chief Towermen and Towermen in Terminal service were furnished only by Southern Pacific and Santa Fe.

What effect does this line of reasoning have upon the question of the applicability of the 1945 Agreement to the Manager-Mechanician at Los Angeles Union Passenger Terminal? We think that it necessarily follows that said Agreement, being with only one of the Terminal operators and affecting a matter specifically covered in the 1939 Terminal Agreement, must be held as inapplicable unless it can be shown that it was the clear intention of the parties thereto to extend its provisions to said position. In this connection we refer again to the language of Paragraph 1 of the 1945 Agreement. Therein we find that the increases are to be granted in offices under the Relay Division. Is the Los Angeles Union Passenger Terminal an office under the Relay Division? In the Employees' rebuttal brief we find the following language:

"The Employees have not and do not claim nor contend, neither do we infer, that the Union Terminal Telegraph Office became an 'office' under the Relay Division, but we do claim, and we think legally and justly so, that the position of Manager-Mechanician located in that office is a position under the Relay Division so allocated by the Tisdale-Elliott letters of May 12 and 18, 1939."

This, in effect, is an admission that the 1945 Agreement does not apply to the Manager-Mechanician position. The Tisdale-Elliott letters referred to in the above-quoted language in our view merely determined the question of from what seniority district the Santa Fe employee at the Los Angeles Union Passenger Terminal would be selected and did not establish the Terminal as an office under the Relay Division. In view of what we have said above it is apparent that the claim must 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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of January, 1949.