

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines that the rate of pay for the agent-telegrapher at Broken Arrow, Oklahoma, be corrected by the Carrier from \$1.21 per hour to the higher rate of \$1.22 per hour, in accordance with the Telegraphers' Agreement, Rule 6 (b), as a result of the telegrapher-clerk's position being consolidated with that of the agent-telegrapher under date of March 12, 1948, and be made effective as of March 12, 1948, as per the Organization's request to the Carrier under date of March 27, 1948.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of September 1, 1947, as to rules and rates of pay is in effect between the parties to this dispute.

The wage scale of the agreement lists the following positions on page 52 of the Telegraphers' Agreement:

Broken Arrow:

Agent-Telegrapher	\$1.21
Telegrapher-clerk	1.22

On March 12, 1948, the Carrier consolidated the telegrapher-clerk's work with that of the agent-telegrapher and abolished the position of telegrapher-clerk. The agent-telegrapher's hours before the consolidation were 7:00 A.M. to 3:00 P.M., Sunday call. The telegrapher-clerk's hours of assignment 11:00 A.M. to 7:00 P.M. When the Carrier abolished the telegrapher-clerk's position, the agent-telegrapher's hours were changed to 8:30 A.M. through 5:30 P.M., and the agent assigned all telegraphing instead of the four hours previously assigned from 7:00 A.M. to 11:00 A.M.

The regular assigned incumbent of the telegrapher-clerk's position when abolished and consolidated with the agent-telegrapher's position, caused a general displacement of other employes on positions elsewhere.

Rule 6 (b) provides:

"When two positions are consolidated, the higher rate will apply."

The rate of pay of the consolidated position of agent-telegrapher at Broken Arrow was not increased to the higher rate of pay of telegrapher-clerk when the duties of the telegrapher-clerk were consolidated with that of the agent-telegrapher.

It is, therefore, unmistakably clear and definitely established by the Petitioner's ex parte submission and oral argument, and Opinion of Board, in Docket TE-530, Award 552, as referred to and quoted in the foregoing, that the claim, facts and circumstances in that Docket and Award involved the consolidation of telegrapher-cashier positions with that of agents, who were not classified and required to perform work as either telegrapher or cashier, while no such or any other consolidation of positions was made at Broken Arrow when telegrapher-clerk was discontinued March 14, 1948, and the hours of Agent-telegrapher were changed to protect the service requirements in accordance with the agreed classification and rate of pay for that position. This did not involve any change in character of work or duties required of the Agent-telegrapher, but was simply a reduction in force from two to one shift as telegraphers, as evidenced by the assignment of eight consecutive hours in accordance with Rule 9, Paragraph (a) of current Telegraphers' agreement, effective September 1, 1947, reading:

"RULE 9. HOURS OF SERVICE

(a) Except as specified in Paragraph (i) eight consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two or more shifts are worked, eight (8) consecutive hours, with no allowance for meals shall constitute a day's work."

As the Agent-telegrapher, at Broken Arrow, is performing the same character of work or duties now that he has always performed, and the character of work or duties performed are in accordance with the agreement classification and rate of pay, no consolidation of positions has actually been made within the intent and meaning of Rule 6, Section (b) of current Telegraphers' agreement, effective September 1, 1947, as that rule has been interpreted in Petitioner's ex parte submission and oral argument, and Opinion of the Board, in Docket TE-530, Award No. 552.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: At Broken Arrow, Oklahoma, Carrier formerly employed a Telegrapher-Clerk intermittently where required by reason of coal shipments from mines nearby. During the war years the position was restored full time with assigned hours 11:00 a.m. to 7:00 p.m. to assist the Agent-Telegrapher whose hours were 7 a.m. to 3 p.m. In March, 1948, Carrier abolished the position of Telegrapher-Clerk, changed the hours of the Agent-Telegrapher to run from 8:30 a.m. to 5:30 p.m. and necessarily assigned to him all telegraphic work, including that formerly handled by the Telegrapher-Clerk. The Committee contends that this was in effect a consolidation of the two positions and that the higher rate of pay of the Telegrapher-Clerk should now apply to the Agent-Telegrapher under their Rule 6(b) providing that "where two positions are consolidated, the higher rate will apply"; Carrier contends that there was not a consolidation but simply the abolishment of one position. However, there is no contention that all the work formerly performed by the incumbent of the abolished position had disappeared or that the change of hours for the one remaining position was not made to permit the Agent-Telegrapher to perform such work.

We find no essential distinction between this claim and that in Award No. 552, and find no reason why it should not be followed here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950