

Award No. 5056
Docket No. TE-4940

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad Company, that as a result of the express business being taken away from the position of agent at Goodland, Kansas, effective February 1, 1948, thereby reducing the average monthly compensation of the position, that the hourly rate for the position of agent at Goodland, rated at \$1.36, shall be adjusted to the hourly rate of \$1.63 of the position of agent at Belleville, Kansas, effective February 1, 1948—the date the express business was taken away—as provided by Rule 10-(b) of the telegraphers' agreement, plus increases granted under the March 19, 1949 Forty-Hour Week Agreement.

EMPLOYES' STATEMENT OF FACTS: There is on file with your Board an agreement by and between the parties hereto bearing the effective date of August 1, 1947 as to rules governing working conditions, and of September 1, 1947 as to rates of pay.

Prior to February 1, 1948, Goodland, Kansas, listed on page 86 of the aforementioned agreement as an agency position with an hourly rate of pay of \$1.36, was a joint railroad-express agency. Claimant and incumbent agent N. A. Cloutier received ten per cent commission from the Railway Express Agency on all express shipments handled, in addition to his railroad compensation. For the thirteen months ending with January, 1948, these commissions were as follows:

1947—Jan.	\$256.81
—Feb.	252.78
—Mar.	283.45
—April	278.89
—May	299.60
—June	297.20
—July	376.94
—August	350.47
—Sept.	300.87
—Oct.	311.46
—Nov.	327.90
—Dec.	356.40
1948—Jan.	290.59
Total	\$3,983.36
Monthly Average	\$ 306.41

which he quotes, states that Section 3 is being interpreted to mean that monthly rated positions are to be increased on the basis of the number of hours used in fixing the monthly rate, 'and to the equivalent hours for special allowance included in said rate.' Likewise, the General Chairman stated that he was sure the carrier's Manager of Personnel was familiar with the method used in affixing the monthly rates whereby "such rates were made up by adding to the hourly rate certain overtime which resulted in the monthly salary." The controversy raised by General Chairman Young in his letter of February 9, 1942, was resolved by reverting to the agreed-upon 243 hour arbitrary figure in the application of the increase. We call attention to the fact that the General Chairman recognized that two wholly different separately agreed-upon methods were employed—

- (1) In arriving at the monthly rate effective January 1, 1928, and
- (2) In applying wage increases. .

It was clearly understood by the employees during negotiations of 1946, and in making the agreement of August 1, 1947, that the 243 hour basis of applying increases or decreases would be continued. This is evidenced by the fact that the 15½¢ per hour increase of September 1, 1947, was applied on the 243 hour basis to these positions. As late as May 4, 1949, the General Chairman withdrew a claim in which he had requested the application of a wage increase in a manner different from the agreed-to 243-hour arbitrary basis. This conclusively shows that the General Chairman concurred in the fact that the 243 hours was the proper basis for the application of increases or decreases in the pay rate to monthly rated agents.

The erroneous method used by petitioner in arriving at the incorrect hourly rate of \$1.63 for the Agent at Belleville—as stated in its claim—was advocated before this Board in Docket TE-3278. The Board did not, however, support the position thus taken by petitioner in making its Award 3374.

The proper way to determine the hourly rate of the Agent at Belleville is to first return to the 1923 or 1928 hourly rate in effect prior to the establishment of the monthly pay rate, computing the hourly rate on the basis of the hours used in arriving at the monthly rate effective January 1, 1928. When this has been done, the rate may be made current by adding to the hourly rate thus obtained the subsequent increases applicable to hourly rated positions.

We assume petitioner will agree that the March 19, 1949 Chicago 40-hour Week Agreement has no application to the basic issue or issues raised by its claim in this case.

We respectfully petition this Board to deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the hourly rate for the position at Goodland shall be adjusted to the rate of the position at Belleville effective February 1, 1948, in accordance with the provisions of Rule 10(b), plus increases granted under the March, 1949, Forty-Hour Week Agreement.

It is agreed that Rule 10(b) is the controlling provision:

"Rule 10(b). When the express business or the commercial telegraph business is taken away or created, or when the commercial telegraph commissions are discontinued on any position, thereby reducing or increasing the average monthly compensation, the General Chairman will be notified and a prompt adjustment of salaries affected will be made, conforming to the rates paid for similar positions."

The Organization asserts that the job at Belleville is a "similar" position. The Carrier denies that Belleville is "similar". It is the Carrier's statement that although there "are other stations on the Carrier's property which are somewhat similar to the station at Goodland", the Carrier does not believe it necessary to discuss them because of the Organization's claim with reference to Belleville. The Carrier contends that the Organization has the burden of proving Belleville to be a "similar" position.

The evidence in the record is that prior to 1928 both jobs were on an hourly basis, and there was only a two-cent difference between the rates for the positions. It must be inferred from the existence of almost identical hourly rates that the parties regarded the contents of the two positions to be "similar". Although many changes have undoubtedly taken place since 1928, the weight of the evidence is that as of February 1, 1948, when the express business was taken away from the position at Goodland, the job was "similar" to the position at Belleville. While gross revenue alone is not controlling, it is nevertheless a factor in evaluating the responsibility required of the agent. Awards 1311 and 1702. The gross revenue at Goodland was \$1,005,237.36, while the gross revenue at Belleville was \$244,847.97. The station forces (including the agents) were almost equal in 1948, and that is the only period that can be used for comparative purposes. The number of way-bills issued is a proper factor. Recognizing the significance of less than carload shipments, the total number of way-bills issued at Goodland was 3459, and at Belleville 2321. Goodland is required to handle slightly more freight claims and reports than Belleville. It must be agreed that no two stations on the line are identical. The facts in this case do not permit a precise measurement of all elements in the contents of the two positions. In expressing the purpose that an "adjustment of the salaries affected" would be made, the parties did not contemplate the necessity of a fine degree of exactness. The comparison must be made between existing positions as they are found on the Carrier's lines. The only evidence in the record with reference to "similar" positions is that the job at Goodland is "similar" to the position at Belleville.

The rate paid at Belleville is \$395.94 as a "Monthly rate as full compensation for all services rendered". The evidence is that although prior to 1928 Belleville and Goodland were both on an hourly basis, in that year the Belleville agent was placed on a monthly rate basis. The monthly rate then paid was arrived at by taking the average monthly hours worked, then 333 hours, and multiplying by the prevailing rate, then seventy-seven cents per hour. The Carrier, however, states that by 1937 the necessity for these long hours had ceased, and the agents in many places were "working only a straight eight-hour day on week-days, being relieved on Sundays and holidays, or working only a few hours". The parties in 1937, therefore, agreed that all of the monthly rated agents would be increased on a uniform basis of 243 hours. The 243-hours divisor has been used since 1937 for applying all wage increases or decreases to monthly rated employees. The hourly rate of \$1.63 requested by the claimant is obtained by dividing the monthly rate of \$395.94 at Belleville by the 243-hours divisor. The Carrier did not dispute the Organization's statement that there are no comparable hourly rated positions on the Carrier's lines. It is the position of the Carrier that since the 333-hours divisor was used when the monthly rate of the Belleville position was set in 1928, it must be considered now in computing an hourly rate at Belleville. The Carrier urges that the monthly rate established in 1928 was 333 hours multiplied by the prevailing rate of seventy-seven cents. Because subsequent increases amounting to fifty-eight cents per hour were added to the monthly rate, the Carrier believes that a rate of \$1.35 (.77 plus .58) is the present hourly rate paid the agent at Belleville.

The Carrier concludes, therefore, that the \$1.36 per hour rate at Goodland conforms to the rate paid at Belleville. This method of computation urged by the Carrier would have been proper in the period prior to 1937. When the parties, however, agreed to a 243-hours divisor in 1937, it was on the basis that the monthly rated employees were then working that approximate number of hours. No evidence has been adduced to show that the 243-hours

divisor is not now correct on the basis that monthly rated employees are working approximately that number of hours. In Award 3374, this Carrier stated that when monthly rated employees worked less than the number of hours on which their monthly rates were originally based, no reduction is made in their monthly salary except when employees lay off of their own accord. In applying the provisions of Rule 10 (b) to the facts of this case and for this purpose only, the 243-hours divisor is proper.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dissent to Award 5056, Docket TE-4940

This award fails to give credit to the import of Rule 2. The occupant of position of agent at Belleville is paid a monthly salary and is governed by the provisions of Rule 2, which reads:

"All employees herein specified shall be paid on the hourly basis, except positions designated by an asterisk (*) in the Wage Scale will be paid monthly rate as full compensation for all services rendered." (Emphasis supplied).

The award errs in using the monthly salary of a position subject to Rule 2 to determine the hourly rate of a position subject to the Overtime, Call, Sunday and Holiday, and all other rules of the agreement except Rule 2.

/s/ C. P. Dugan

/s/ A. H. Jones

/s/ R. H. Allison

/s/ C. C. Cook

/s/ J. E. Kemp

Dated at Chicago, Illinois, this 17th day of October, 1950.