

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that the three telegrapher-clerk-towerman positions at Martinez, California, Western Division, be additionally compensated 1½c per hour effective January 24th, 1946, account required to operate manually controlled station train indicator, the signal on this indicator being located approximately 3600 feet west of Martinez Station.

**JOINT STATEMENT OF FACTS:** 1. There is in evidence an agreement between the carrier and its employes represented by the petitioner, bearing an effective date of December 1, 1944 (hereinafter referred to as the current agreement), a copy of which is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains a station at Martinez, California, an intermediate point, situated on the Western Division in that portion of the double track territory extending between Oakland Pier and Sacramento. The main track approaching Martinez Station from the west (railroad direction), and continuing eastward to the approach to Suisun Bay Bridge, is in slightly ascending curved territory.

3. It is necessary for passengers when entraining or detraining from Westward trains at Martinez, and for station forces in the performance of their work incident to loading or unloading baggage, mail, express, to cross the eastward main track in moving between trains and the station building. For those reasons, during the periods of time that westward trains are stopped on the main track at the station, eastward trains and yard engines, whether stopping at or passing through Martinez Station, are required to come to a stop at a point west of the station a sufficient distance to clear the station platform.

4. In order to provide additional advance notice to engine crews of eastward trains and yard engines, the carrier installed a station train indicator within the limits of Martinez Station, at a location 3,600 feet west of the station building; said indicator being first placed in service on January 24, 1946. The purpose and function of the indicator is two-fold, namely, to inform eastward engine crews when that portion of the westward main track between a point 1,000 feet east of the station building, and Ferry Street crossing 65 feet west thereof, is occupied by a westward train, thus enabling such crews to prepare for and to stop west of the station, also to enable the eastward crews to stop a sufficient distance west of the station to permit them to again attain speed necessary to ascend the grade approaching Suisun Bay Bridge without further assistance.

Although petitioner in the statement of claim does not set forth the provision of the current agreement upon which it relies to support the additional compensation requested, however, during the handling of the matter with carrier's representatives, the petitioner's representatives cited and relied entirely upon paragraph 3, Section (c), Rule 31 of the current agreement, which is as follows:

"If an employe considers himself overworked, complaint to proper officer shall be promptly considered and if well founded, necessary relief afforded. Assignment of duties other than those usually performed by employes may be handled through their committee in accordance with the rules of this agreement."

It will be observed that paragraph 3, Section (c), Rule 31, is confined to the procedure for handling complaints of employes who consider themselves to be overworked, and the progressing through the committee, of matters involving assignments of duties other than are usually performed by employes covered by the current agreement. It is significant, however, that in no place in that particular portion of Rule 31 is any provision made for payment of any compensation to employes; in other words, paragraph 3, Section (c), Rule 31 of the current agreement is clearly an administrative provision, and is not in any sense a compensation rule.

Insofar as the instant docket is concerned, the carrier is not aware of any complaint having been registered by the telegrapher-clerk-towermen employed at Martinez passenger station, or any complaint submitted on their behalf by petitioner's representatives, that such employes consider themselves as being overworked as result of the requirement that they operate the push button for the purpose heretofore described.

With respect to the assignment to those employes of the duty of operating the push button, it is the carrier's position that such assignment is proper; that no basis is present by reason thereof for any contention that such assignment constituted a violation of paragraph 3, Section (c), Rule 31, or any other rule of the current agreement; nor does such assignment in any manner provide a justifiable basis for the payment of any additional compensation.

The carrier asserts that nothing contained in paragraph 3, Section (c), Rule 31 can be construed as supporting the petitioner's request that additional compensation be allowed telegrapher-clerk-towermen employed at the Martinez passenger station for performing the duty described, and submits that in the final analysis, what the petitioner is actually seeking in this docket is an increase in the rate of pay for said employes, that as such, the dispute is a matter of negotiation and one over which this Division lacks jurisdiction. While this Division has the authority to construe and enforce agreements, the principle that it does not have authority to make changes in rates of pay, to increase rates of pay, make new rules, or amend existing rules, is well-established.

The carrier submits that the claim in this docket is without basis or merit; therefore, if not dismissed it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** By their joint submission the parties to the instant dispute agree on the facts. The claim is for additional compensation at the rate of 1½c per hour over and above existing rates of pay for three telegrapher-clerk-towermen positions at Martinez, California, effective January 24, 1946 on account of a requirement that there be operated manually controlled station indicator, the signal on this indicator being located approximately 3600 feet west of Martinez Station.

On the basis of the entire record, the Board concludes that the subject matter of this dispute involves a proposed adjustment in rates of pay and,

since the existing Agreement does not afford a basis for Board action, the dispute must be settled on the property.

Careful attention has been given to the present rules and it has been concluded that paragraph 3, Section (c), Rule 31, is an administrative rule and is not a compensation rule. Rule 31 (h) provides no basis for comparison between wage rated positions, or other means for determining a proper rate of pay, but does require additional compensation to cover service predicated upon increased duties and responsibilities in handling remote or centralized traffic control devices. In the opinion of the Board, this rule expresses a clear intent that additional compensation is due employees where the duties and responsibilities of their positions are increased, but in the absence of standards, or definite criteria, in the Agreement, what constitutes a proper rate of pay is not provided for in the Agreement.

We have looked to the Memorandum of Agreement, dated September 23, 1944, as a possible guide or standard, but find therein nothing more than a specially negotiated Agreement, presumably made pursuant to Rule 31 (h), granting an increase in rates of pay to compensate for additional duties and responsibilities attendant upon certain work at locations named in the Agreement, and providing similar allowances for the same work in the future at other locations when new installations of the same type are made. On the facts at issue there appears no basis for holding that the agreed upon rate increases for operating signals known as "take siding indicators" or "main line and siding indicators" can be used as a comparison for determining the proper increase, if any, in rates of pay for operating other remote control devices. That such was not necessarily intended is shown by the fact that the same Agreement made specific allowance for pay adjustments heretofore granted these very same positions arising from the installation of "remote control" at the stations in question.

While this Board has the authority to construe and enforce agreements, and in connection therewith to apply rules requiring adjustments in rates of pay, the principle that it does not have the authority to make changes in rates of pay, or to increase rates of pay, but only to apply the rules, is so well established as not to require the citation of authority. Being unable to find any right conferred upon the Board by the subject Agreement to settle the issue in dispute, the case is remanded.

**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 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 rules of Agreement afford no basis for Board action.

#### AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.