

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad, that:

The Carrier shall compensate Printer Maintainer P. D. Lewis the difference between what he was paid as Printer Maintainer and the rate of the position he worked as Wire Chief at "DC" Telegraph Office, Denver, Colorado, commencing August 14, 1950, and continuing each working day until the practice of the Printer Maintainer doing Wire Chief work, is discontinued.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement bearing effective date of January 1, 1948. This agreement was reprinted August 1, 1951, to include changes and agreed-to interpretations, governing the hours of service, rates of pay and working conditions of Telephone and Telegraph Maintenance and Construction Employees, hereinafter to be known as the Maintainers' Agreement.

During the summer of 1950 some new communications equipment was installed in "DC" Telegraph Office, Denver, Colorado, and on or about August 14, 1950, the Carrier instructed Printer Maintainer P. D. Lewis to handle wire trouble, balance and patch circuits and perform any and all work pertaining to the wire chief duties in addition to his regular duties at "DC" Telegraph Office during the time that he was on duty in that office each day, Monday through Friday.

The basic rate of pay of the Night Chief, whose position embraces wire chief duties at "DC" Telegraph Office at a time that the Manager and Printer Maintainer are not scheduled to be on duty, is \$1.875 an hour. The basic rate of pay of the Printer Maintainer is \$1.681 an hour. This makes a difference of 19.4¢ an hour in the two rates of pay.

The Organization concurrently is handling a claim before your Board concerning the impropriety of the Carrier in requiring this Printer Maintainer to perform Wire Chief work. This instant claim concerns the right of Printer Maintainer Lewis to be paid the higher rate of pay, the rate established by agreement for the wire chief work. The Carrier has denied the claim, leaving the Organization with no alternative but to appeal to your Board for adjudication of the dispute.

AWARD

The claim is denied."

On the basis of the awards of your board, the work of testing and regulating communication lines is not exclusively the work of one craft or another, but depends on the particular facts involved. No facts have been cited by Organization on which it bases the claim and on the date Organization contends P. D. Lewis performed the work that allegedly violated the agreement, P. D. Lewis was on vacation.

In view of the vagueness of the present record, Carrier submits your Board should dismiss this claim.

All data in support of Carrier's position have been submitted to Organization and made a part of this particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This Award should be read in connection with Award No. 6579 for reasons apparent therein.

As has been noted, the claim in this case is for additional compensation under the "higher rate of pay rule" until the practice of the Printer Maintainer doing Wire Chief work is discontinued."

As we pointed out in Award No. 6579, the question to be resolved in that case was whether the Manager of the Denver Office was performing "Wire Chief" work. If he was not, this Claimant could not have been because he was merely helping the Manager.

The above of itself might justify the denial of this claim, but we think it must be denied on a sounder basis.

Claimant bases his claim on Rule 25 of the Agreement which reads as follows:

"When an employe is required to fill the vacancy of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the vacancy of another employe receiving a lower pay rate, his rate will not be changed.

This Referee had difficulty in trying to figure out where the "vacancy" was in this docket that would make Rule 25 applicable, so during the presentation, the Referee asked the representative Member of the Organization where the "vacancy" was and he replied "It was theoretical."

We do not know why this rule on this Carrier was drawn differently than the rules in the long list of Awards on this point, viz., that the higher rate of pay goes with the filling of the higher position, but whatever the reason, there it is, and it is not ambiguous. The Organization attempts an ingenious argument to create the "vacancy" but it will not bear analysis under the rule. The principal Award relied upon is 4454 but the rule relied on in that case reads "13 (a) Regularly assigned employes will not be required to perform service on other than their regular positions except in emergencies. When they are required to perform service on other than their regular positions, they will be paid the rate of the position they fill but not less than their regular rate * * *."

Also, it may be noted that the Opinion in Award 4454 says in addition to what the Organization quotes in its submission from that Opinion, "It is fundamental that one has no rights under an Agreement to which he is not a party except as they may be adopted by the provisions of his own Agreement."

In all of the Awards (3489, 3299, 3117 and 2703) cited in Award 4454, the rule (described by the Organization as "similar in intent to Rule 25 of the Agreement presently before us") uses the usual language, already alluded to, but to say that Rule 25 falls in the same category is not supported by any Award called to our attention.

It is obvious by now, that much of the same confusion that existed in Docket TE-6509 is present here, but we know of no way whereby this claim could be saved by further negotiation as was our recommendation in that case, so this claim will have to be denied.

(Page reference relates to original documents.)

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 Employes involved in this dispute are respectively Carrier and Employes 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.