

Award No. 7069
Docket No. TE-6911

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John Day Larkin, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

- (1) Carrier violated the Agreement between the parties hereto, when, commencing on the 1st day of September 1949, and continuing thereafter, it failed and refused to compensate the agent-telegrapher and other clerk-telegraphers, performing around the clock service, at Robbins, South Carolina, as provided in said Agreement, for performing work of handling ground switches.
- (2) Carrier shall be required to compensate said agent-telegrapher and each and every other such employe performing such work at Robbins, South Carolina, at the rate of \$4.00 per month.
- (3) Carrier shall be given credit for any amount paid to such individual employes and the remainder due to be ascertained by joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Atlantic Coast Line Railroad Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes, covering wages, hours of service and other conditions of employment for all employes of Carrier represented by Telegraphers. The Agreement was effective November 1, 1939, and has been amended in several respects. The original Agreement with all amendments have been filed with this Board and is, by reference, included herewith as though copied herein word for word.

This dispute arises out of application of the Agreement as to compensation for work performed by employes (covered by Telegraphers' Agreement) at Robbins, South Carolina. At this point Carrier maintains a station and telegraph force as follows:

Agent-Telegrapher (5 work days per week)	1st Shift (8 hours) 2 rest days
Clerk-Telegrapher (5 work days per week)	2nd Shift (8 hours) 2 rest days
Clerk-Telegrapher (5 work days per week)	3rd Shift (8 hours) 2 rest days
Clerk-Telegrapher (5 work days per week)	Rest day relief
Clerk-Telegrapher (1 work day per week)	Tag end rest day relief

Each employe, on each shift, is required to handle one ground switch located outside the station. Under Rule 19, Carrier agreed to compensate

the number of days they handled switches. For example, Mr. Large claims 13/31 of \$4.00 or \$1.68. Mrs. Large claims 9/31 of \$4.00, of \$1.16, and the other Telegraphers claim proportionate amounts.

The Carrier is also attaching as its Exhibit No. 2 photostatic copy of check roll for the second period of January, 1951, covering employes at Robbins, S. C., which was prepared and signed by Agent Large. This check roll, like that mentioned above, shows the amount due each telegraph service employe for handling switches. Mr. Large, who worked 12 days, claims \$1.92, which represents 16c per day for handling switches. In like manner, Messrs. Glover, Carroll and Bobbit are shown at 16c per day for the number of days they handled switches.

When the rate was increased from \$4.00 to \$4.80 per month, this produced an average of 16c per day, and to simplify preparation of payrolls and other accounting, we have, since September 1, 1949, used the rate of 16c per day for handling one or two switches and rate of 8c per day for handling one additional switch. In either event, the use of 16c per day or 8c per day is an increase of not less than 20%, as compared with the rate applicable prior to such increase.

Here, the employe in whose favor the claim is made has shown by his own records the amount due telegraphers for handling switches, which is exactly in accordance with the provisions of the agreement. These amounts have been paid to Mr. Large and other employes in accordance with the agreement, and the Carrier contends that it has fully discharged its obligations under the agreement, and that the employes have no just cause for complaint. The claims, not being supported by the terms of the agreement, is without merit and should be denied by the Board.

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employees' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim of the General Committee of The Order of Railroad Telegraphers is that the Carrier has violated the Agreement since the first day of September, 1949, in that it has not paid each of the agent-telegraphers and clerk-telegraphers regularly performing service at Robbins, South Carolina, \$4.00 per month for the handling of outside switches. Rule 19, first adopted by the Carrier and the Association of Agents and Operators, December 10, 1925, specifically provides that:

"Employes required to go outside of offices to handle ground switches will be paid four (4) dollars per month for one or two switches, and two (2) dollars per month for each additional switch for this service."

The O.R.T. became the official representative of these employes in 1937, and an Agreement effective December 10, 1937 was negotiated. The language of Rule 19, as quoted above, became an incorporated part of the agreement with the present Organization. And when revised in 1939 (effective November 1) this agreement retained Article 19 without change. Throughout the history of Rule 19, from 1925 forward, the Carrier has made an allowance of \$4.00 per month for each shift requiring the handling of ground switches. But this amount has always been prorated on a calendar day basis to the several employes involved. That is, it has never been the practice to pay each

employe \$4.00 per month, but rather to pay to each employe his prorated share of the \$4.00, according to the employe's time actually on the job. As the Carrier has explained it:

"For instance, in a 31-day month, an employe handling ground switches on 13 days was allowed 13/31 of \$4.00; whereas, in a 30-day month, an employe working the same number of days was allowed 13/30 of \$4.00."

This continued without protest or objection. On July 18, 1949, the parties reached an agreement relative to certain provisions of the Forty-Hour Work Week; but they failed to agree upon compensation for the handling of ground switches. The matter was referred to the Forty-Hour Week Committee, which rendered Decision No. 12. Following this decision, the parties revised Rule 19, effective July 28, 1950, only to the following extend:

"Employees required to go outside of offices to handle ground switches will be paid four (4) dollars per month for one or two switches, and two (2) dollars per month for each additional switch for this service, except that such amounts shall be increased in accordance with the provisions of Section 3 (a) of Article 5½." (The new language is underlined.)

Article 5½, Section 3 (a) provides that:

"(a)—MAINTENANCE OF EARNINGS

Effective as of September 1, 1949, all types of hourly or daily rates, whether time, piece, or a combination of both, which lead to employes' normal earnings (exclusive of the general increase of seven cents per hour effective October 1, 1948), shall be increased by 20% in order to provide 48 hours' pay for 40 hours' work. All daily and hourly differentials, arbitraries, and special allowances shall likewise be increased by 20%; monthly and weekly compensation of this character on the basis of six days per week shall remain unchanged when the work week is reduced to five days and additional proportionate amounts shall be paid to employes relieving on rest day or days of such positions." (Emphasis supplied.)

To meet this changed situation, and to simplify its accounting, Carrier increased the rate for handling switches 20%, or from \$4.00 to \$4.80 per month, and continued to prorate the amount as it had done previously. That is, in a 30-day month each employe now gets 16 cents per day for each day he is required to perform this service on the minimum number, one or two, switches. Following this, the Carrier, in October 1950, claims to have adjusted the compensation due all employes for handling switches, retroactive to September 1, 1949. The Organization has questioned the accuracy of this statement, and asks permission to check the record.

As we understand the issue, it is not over the method of compensation, but rather the amount that is being paid by the Carrier for handling the switches. As set forth in the Organization's Ex-Parte Submission, the Carrier's figures and those of the Organization differ in the following manner:

Employees' Contention

Agent-Telegrapher (1st shift)	\$2.93 per month	\$4.00 per month
Clerk-Telegrapher (2d shift)	2.93 " "	4.00 " "
Clerk-Telegrapher (3rd shift)	2.93 " "	4.00 " "
Clerk-Telegrapher (rest day relief)	2.93 " "	4.00 " "
Clerk-Telegrapher (extra tag end day)	.16 per day	.18 per day

In view of the rather limited modification of Rule 19, since its inception, we can only conclude that the Carrier is in substantial compliance with its terms. The only change in this rule is that "Maintenance of Earnings" for employes whose hours have been reduced to 40 per week is required. This, of course, means a 20% increase in pay allowance. And the same percentage increase is to be applied to all daily and hourly differentials, **arbitraries and special allowances**. When the Carrier has increased the allowance for handling the outside switches from \$4.00 per month to \$4.80 per month it is in compliance with this rule. The system of prorating the amount according to the fraction of the month each employe performs this extra duty has not been changed or disturbed by any new language in the Agreement made effective September 1, 1949.

The specific request made by the Organization, that each regularly assigned employe, and the rest day relief man, be paid \$4.00 per month for the service in question, must be denied. The new rule does not require such a change. Nor does it in any way disturb the system of prorating the amount allowed for handling of the outside switches. It only requires that the Carrier increase this extra allowance by 20%. This, we believe, the Carrier has substantially performed.

Our attention has been called to Award No. 5808 (Docket No. TE-5565). The facts, circumstances, and the rule involved in that case are different from those in the instant case. There the language of the controlling rule spelled out the requirement to pay \$10.00 per month to "An employe required to protect crossings," etc. The rule to pay "an employe" for this service was introduced in the 1948 Agreement. And in the 1949 Agreement the parties to that dispute further revised their rule to retain the \$10.00 payment on an individual basis, and to pay the proportionate amount necessary to take care of those who worked on relief days. The entire history of Rule 19, in the instant case, shows that the \$4.00 has been paid on a prorated basis to those **employees** who have performed the service on the outside switches. Nothing has been added to Rule 19, or to Article 5½, Section 3 (a) except that the amount thus paid should be increased by 20%. This, we understand, the Carrier has substantially complied with.

This leaves only one question unanswered. The Organization claims that the Carrier did not make full retroactive payment on the additional allowance on hourly differentials, arbitraries and special allowances as provided in Article 5½, Section 3 (a). The Carrier has made the statement that the adjustment was made retroactive to September 1, 1949. Neither side has offered proof of these general statements.

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 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

(1) That the Carrier has substantially complied with the rule in that it has increased the monthly allowance for handling outside switches by 20%, from \$4.00 per month to \$4.80 per month.

(2) That nothing in the language of the rule requires a formula different from that historically used for prorating the monthly allowance for the service in question.

(3) That the issue over retroactive payments to cover the increased allowances between September 1, 1949, and October 1950, (when the Carrier claims to have made retroactive payment), be remanded to the parties for a determination from the records. If compliance with Article 5½, Section 3 (a), as above interpreted has been performed, Carrier has fully complied.

AWARD

(1) The claim as stated is denied.

(2) The question of retroactive payment of increases to cover arbitraries and allowances, prior to October 1950, is remanded to the parties for settlement on the property in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1955.