

Award No. 13271

Docket No. TE-11060

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violated the agreement between the parties when on April 18, 1958 it improperly reclassified the position of Agent-Telegrapher at Dyer, Tennessee to that of Small Non Telegraph Agent and changed the hourly rate of pay (\$2.342) to a monthly rate of \$339.91.

2. Carrier shall be required to restore the position of Agent-Telegrapher at Dyer with the proper rate of pay; restore the regularly assigned incumbent, S. N. Jones, to the position; compensate him for any loss of wages; and reimburse him for any expenses incurred.

3. Carrier shall be required to restore to their former positions all other employees displaced as a result of this violation, compensate them for loss of wages and reimburse them for expenses incurred.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Dyer, Tennessee is a station on the Northern Division, J & O District, of this Carrier. For more than fifty years the position of Agent-Telegrapher has been listed in the successive agreements between the parties.

Superintendent W. H. Forlines, of the Northern Division, wrote the following letter to S. N. Jones, Agent-Telegrapher at Dyer:

"Jackson, Tenn., April 14, 1958

Mr. S. N. Jones, Agent
Dyer, Tennessee

Effective with the close of business Friday, April 18, 1958, the position held by you as agent, Dyer, Tenn. will be discontinued.

You may exercise your seniority in accordance with the Agreement.

Paragraph (b) contains the formula to be used and specifies that "when new positions are created these rules shall apply and compensation shall be fixed in conformity with that of existing positions of similar work and responsibility on the same seniority district". This is precisely what the Carrier did in the instant case. After considering all of the factors involving existing positions of similar work and responsibility on the same seniority district, the rate at Dyer was fixed to conform to the rate at Rienzi, Mississippi. There were four stations on the same seniority district that were considered as positions of similar work and responsibility with that of Dyer. In making this determination, the station performance records of Dyer and the four comparable stations were examined. These records include the number of pros and waybills issued at the respective stations, cars of revenue freight received and forwarded, pounds of revenue freight received and forwarded, the balance sheets and other similar and pertinent information. Of the four stations considered comparable with Dyer, Rienzi had the higher rate of the four, therefore, the rate fixed at Dyer was the highest of the comparable positions. The rate at all of the comparable stations is a monthly rate. This is the reason for fixing the rate at Dyer on a monthly basis. As will be shown by examining the claim in the instant case, no claim is made that the Carrier did not fix the rate at Dyer in conformity with that of existing positions of similar work and responsibility on the same seniority district. The above explanation as to the fixing of the rate is furnished to avoid any question of doubt that the Agreement was not complied with, in toto.

THERE IS NO NEED FOR TELEGRAPH SERVICE AT DYER

The uncontradicted facts are that the need for telegraph service at Dyer ceased to exist. No claim or contention has ever been made that any person at Dyer, since April 18, 1958, has performed any duties that should be performed by telegraph operators. The need for telegraph service having ceased, the employment of such a person at Dyer would add nothing whatsoever to the safety, efficiency or economy of the operation. On the other hand, the employment of a telegrapher would only mean the unnecessary waste of manpower and revenue.

CONCLUSION: Agent-telegrapher positions have been changed to non-telegraph positions in innumerable instances during a period of over forty years. Such changes have been made each time the need for telegraph service at a station has ceased to exist. This was the practice that prevailed at the time the current agreement was negotiated in 1953. It was to avoid any controversy as to the procedure to be followed or the rate of pay to be fixed that Rule 2(b) and (d) were incorporated in the Agreement between the parties. These provisions were specifically followed in making the change at Dyer. The employment of a telegrapher at Dyer would serve no useful purpose whatsoever. It would contribute nothing to the safety, efficiency and economy of the operation. On the other hand, it would result in the unnecessary waste of revenue and manpower. The claim is contrary to the Agreement and the prevailing practice and should be denied.

OPINION OF BOARD: This Board is asked to consider the propriety of the Carrier's action in reclassifying the position of Agent-Telegrapher at Dyer, Tennessee to that of Small Non Telegraph Agent effective April 18, 1958.

Claim was made; this action violated the terms of the parties' Agreement of June 1, 1953; that no provision was made in the Agreement for Small Non Telegraph Agent positions being created; that they could be created

only by contract negotiations of the parties.

Carrier claims that its action was proper for the following reasons:

1. There had ceased to be a need for the performance of telegraphic duties at Dyer, Tennessee; and,

2. The change was made pursuant to the following sections of the parties' Agreement of June 1, 1953:

"RULE 2(d) :

"When an agent-telegrapher position is changed to a non-telegraph position, or when a non-telegraph position is changed to an agent-telegrapher position, the incumbent of the position prior to the change, if qualified, may occupy the changed position, subject to displacement, or he may exercise his rights in accordance with the seniority rules. The rate of pay for the changed position shall be determined in the manner prescribed in paragraph (b) of this rule," [and]

"RULE 2(b) :

"When new positions are created these rules shall apply and compensation shall be fixed in conformity with that of existing positions of similar work and responsibility of the same seniority district. The reestablishment of a former position shall not be considered a new position within the meaning of this rule. When a former position is reestablished, the rate of pay on the position when it was discontinued shall be restored, giving effect to any applicable, subsequent changes in rates of pay. The term 'new positions' as used herein refers to positions that are established for the first time at a given location."

In the instant case S. N. Jones, Agent-Telegrapher at Dyer, Tennessee elected to exercise his seniority rights on April 18, 1958 rather than accept the Small Non Telegraph Agent's position. Mrs. M. L. Bynum is the present holder of the Small Non Telegraph Agent's position at Dyer, Tennessee.

This Board in prior awards has confirmed the right of the Carrier to change the classification of positions:

1. From telegrapher-clerk to Agent-Telegrapher when there has been a reduction of telegraphic duties. Conform Award No. 9835 (Le Driere) and No. 10981 (Moore) and

2. From Agent-Telegrapher to Non Telegrapher Agent—Conform Award No. 644 (Swacker) and Award No. 9961 (Weston) and from Agent-Telegrapher to Small Non Telegraph Agency, Conform Award No. 7768 (Cluster), when there has been a cessation of need for the performance of telegraphic duties.

A careful review of the record fails to disclose any work performed at Dyer, Tennessee after April 18, 1958 necessitating employment of telegraphically trained personnel.

Contention is now made that Rule 2 (b) speaks of "non-telegraph position" and does not apply to "small non-telegraph position." (Emphasis ours.)

The Agreement between the parties dated June 1, 1953 is the result of over 50 years of dealings between the parties. Where this Board is dealing with a course of conduct of this antiquity, it may well consider the parties past conduct in interpreting the Agreement of today.

Also, is not a small non-telegraph position a part of a non-telegraph position?

Between the period September 1, 1919 and October 1, 1952, 33 positions on the Carrier's property were changed from Agent-Telegrapher to non-telegraphic agency.

On October 1, 1952 the Carrier's position at Kenton, Tennessee was changed to Small Non Telegraph Agency. The Carrier's action was challenged in this and was upheld in Award No. 7768 (Cluster) decided March 1, 1957.

The parties' Agreement of June 1, 1953 provides for many "small non telegraph agency" positions. Contention is made at this time none can be added to this list without an Agreement re-negotiation. Rule 2(b) can't be applied. The question is: Is this Agreement list of small non-agencies static?

If some of these small non telegraph agency positions had a re-introduction of telegraphic duties could they be re-classified to Agent-Telegrapher or telegrapher or would we be met with the contention Rule 2(b) did not apply. We think not.

Rule 2(b) and (d) are deemed to apply equally to non-telegraph and small non-telegraph positions.

It remains then to test the Carrier's conduct in regard to Rule 2(b):

"When new positions are created these rules shall apply and compensation shall be fixed in conformity with that of existing positions of similar work and responsibility on the same seniority district . . ."

A review of the record discloses Carrier made a survey of the small non-telegraph positions in the seniority district and assessed the pay for Dyer, Tennessee with the pay of the top position of the small non-telegraph agency type in the district. The Organization declined to participate contending the basic establishment of the small non telegraph agency position violated the Agreement.

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 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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.