

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when it arbitrarily and without agreement reclassified the position and reduced the rate of pay of the agent at Atkins, Arkansas.

2. Carrier shall restore the agreed to classification and negotiated rate of pay to this position beginning with May 15, 1961 and shall retain the agreed to classification and negotiated rate unless changed by agreement.

3. Carrier shall compensate W. C. Burnett, or the incumbent of the position of agent, Atkins, Arkansas, for the difference due him between the arbitrary rate set by the Carrier and the agreed to rate set by negotiation beginning with Monday, May 15, 1961, and continuing until the proper rate is restored.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties with rules effective September 1, 1949, and wage schedule effective February 1, 1951. Listed at page 62 is the position of agent-telegrapher at Atkins, Arkansas. The rate of the position as shown is \$1.755 per hour. With agreed to wage increases, the rate of this position on May 14, 1961, was \$2.53 per hour. The rate to which the position was arbitrarily reduced was \$2.265 per hour, a loss in the negotiated compensation on the position of 26½ cents per hour. This position was the third highest hourly rated agent-telegrapher position on the District on May 14, 1961, with only Spadra and Ozark having higher hourly rates.

There was a position under the agreement at Atkins in the first agreement negotiated in 1892. The rate of the position then was \$54.00 per month with Ozark rated at \$55.00 and Spadra at \$40.00. In the agreement of 1904, the Atkins position was rated higher than either of the other two, being rated at

the point reclassified, which is an element of fact and facts are not negotiable. The next element of rates being fixed in conformity with positions of the same class in the seniority district, and inasmuch as the rate fixed is that for small non-telegraph station where limited telegrapher duties are required by the Carrier, there are positions of the same class on the seniority district having the same rate of pay. In view of the fact that the rate of pay and designation for small non-telegraph stations where limited telegraphic duties are required has been agreed to between the parties of the agreement and neither has a veto power, no further negotiation is necessary.

In their argument that the Carrier failed to negotiate, the Employees have taken an untenable position, both as to fact and as to application of the rule. The record clearly shows this reclassification was handled with the Employees in line with the rule and met with rejection by the Employees. When the efforts of the Carrier to secure Employee concurrence failed, and the fact that the Employees do not have veto power, the Carrier proceeded to carry out the provisions of the rules of its own volition. In this case the reclassification was protested and the Organization representatives would not agree to an adjustment in rates.

The Employees have based their rejection of the reclassification upon a reflection of the station earnings; they attempted to support their contention by the amount of clerical work being performed. The amount of time an employee is occupied with work during his regular hours is not the basis upon which the rate of pay of his position is determined. The principle of the basic day is eight hours' work for eight hours' pay and the mere fact that the duties of a position require the performance of eight hours' work does not necessarily require an increase in the daily rate.

Station revenue is not the sole test in the determination of changes such as here involved, and even if station revenue was to be utilized as the sole test for fixing rates, the small revenue at Atkins averaging less than \$10,000.00 per month would not warrant the rate here sought by the Employees. Although there are Agent-Telegrapher positions still being paid the telegraph rate at stations where the business handled is less than is handled at some other stations, the occupants of those positions are required to handle telegraph and train order work, such duties and responsibilities not having been removed from those positions.

The foregoing clearly reveals the Carrier properly reclassified the position of Agent-Telegrapher to position of Agent-Restricted Operator under the applicable rule agreed to by the parties, and the Carrier applied the rates agreed to by the parties to the Agent-Restricted Operator position at Atkins under the applicable rules agreed to by the parties.

The contentions of the Organization of the Employees and the theories upon which they are founded have no merit when viewed in the light of the applicable rules of the Telegraphers' Agreement and the Carrier respectfully requests your Board to deny the claim as was the case of similar claims presented to Special Board of Adjustment No. 117.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective May 15, 1961, after previously having determined that there was no longer need for telegraph or train order duties at the Atkins, Arkansas station, Carrier reclassified the position held by Claimant from Agent-Telegrapher to Agent-Restricted Operator.

Petitioner asserts that Carrier's act was unilateral and in violation of the terms of the applicable agreement of the parties. Restoration to the former classification and pay scale is sought and claim is made for the difference allegedly due Claimant between the rate set by Carrier and the rate he was receiving in the former classification, i.e., \$2.265 per hour and \$2.53 per hour, respectively.

The parties are not in dispute that the following provisions of the Agreement are applicable:

"CLASSIFICATION

Rule 2. (a) Where position is discontinued and subsequently re-established without substantial change in duties or conditions, the rate of pay for the reopened position will be the same as that in Rule 21.

(b) When additional positions are created the rate of pay will be fixed in conformity with positions of the same class as shown in wage scale on the seniority district where created, except that in offices where two or more telegraphers are employed (not counting the agent or agent-telegrapher as one of the two) the rate of pay will not be less than the lowest rate in that office.

(c) At small non-telegraph or non-telephone agencies it will be permissible at the option of the carrier to require the agent to handle Western Union service, railroad communication service confined exclusively to the transmission of car orders and securing reports on the probable arrival of trains for bulletin board information. Where such service is exacted the classification of the agent will be identified as agent-restricted operator and rated \$1.365 per hour (\$1.49 per hour effective Feb. 1, 1951).

NOTE: It is agreed that the communication service herein provided for does not permit of the handling of train orders and railroad messages of record, the OS'ing of trains and other communications ordinarily handled as between telegraph operators and telegraph operators and dispatchers, except in an emergency; in the latter case the rate of pay for that agency for the day shall be the minimum rate for telegraphers on that division.

(d) When agent-telegrapher positions are reclassified to small non-telegraph agencies, all railroad telegraph and telephone circuits leading to the office and the instruments therein, except such as are necessary for purposes and under conditions expressed in section (c) hereof, shall be removed from the office within ten days from date of reclassification.

(e) Any protest of the rate established for position under either section (a) or (b) of this rule must be presented within 60 days of the date the position is established; otherwise protest will not be recognized.

(f-1) Positions, not employees, shall be rated.

(f-2) The rates of pay, either hourly or monthly herein tabulated, are fixed with due regard to conditions existing as of the effective date of this agreement, but it shall not preclude the reclassification of agents or agent-telegraphers to that of small non-telegraph agents where substantial decreases in the duties and responsibilities of a permanent nature continuously accrue for a reasonable period; neither will it preclude the changing in classification of positions and adjustment in rates of pay to meet substantial changed conditions of a permanent nature for a reasonable period that require increased or decreased duties and responsibilities of employees. Where positions are reclassified rates of pay established therefor shall be fixed in conformity with Rule 2-(b) by agreement between the parties of this agreement.

RATES OF PAY — WAGE SCALE

Rule 21. (a) The listing of positions by their respective payroll classifications and locations in the following tabulation does not imply the continued retention of the positions in any particular office, as nothing in this tabulation is intended to abrogate in any manner whatsoever the application of the preceding rules governing the hours of service and working conditions of the employees that provide, among other things, for an orderly manner of increasing or decreasing forces."

The instant record discloses that the duties and responsibilities of handling train orders were eliminated from the position in question at the Atkins, Arkansas station. Carrier states that they were eliminated for the reason that they were no longer needed.

The first query for us to determine is, was the mentioned action of Carrier a substantial decrease in the duties and responsibilities of the position as was contemplated by the parties and set forth in Rule 2-(f-2) quoted above? Award No. 1 and other awards of Special Board of Adjustment No. 117, which had before it the same parties and Agreement, and in resolving a similar dispute, answered the query posed above in the affirmative. We agree with the Special Board's determination and also find that in reclassifying the position Carrier did not violate the Agreement. As a consequence of this finding we are led to the second query, which is, was Carrier required, under these facts, to negotiate a rate of pay for the reclassified position, i.e., Agent-Restricted Operator?

Were it not for a portion of the latter phraseology of the concluding paragraph of Award No. 1, supra, perhaps the instant dispute and others which are to follow, would not have reached this Board for decision. We refer to the following portion of that Award:

"It is clear from an examination of Rule 2-(f-2) that the Carrier may, under these circumstances, properly reclassify the position, but that such rule places a corresponding responsibility upon the parties to negotiate as to the wage rate for the position so reclassified as provided in Rule 2(b)."

We do not know if the facts presented to Special Board No. 117 disclosed another Agent-Restricted Operator within the seniority district embracing Epps, Louisiana, but support is found in this record that for a finding that from within the seniority district embracing Atkins there were other employees

classified as Agent-Restricted Operators and that each was receiving a rate of pay of \$2.265 per hour, the rate given Claimant herein at the time the position in question was reclassified.

When the finding of the above paragraph is applied to the terms of Rule 2(b) of the agreement we are of the opinion that the answer to our second query must be in the negative. The reason being that only in the absence within the seniority district of a rate of pay for the reclassified position is there a mandatory requirement for negotiating a rate for such position.

Finding no violation of the Agreement and there being no facts presented to show that an exception as stated in Rule 2(b) is applicable, we will deny the claims.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1965.