

Award No. 13897
Docket No. TE-13529

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:

CLAIM NO. 1

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 Garnett, Kansas.

2. Carrier shall restore the agreed to classification and negotiated rate of pay to this position beginning with Monday, May 29, 1961 and shall retain the agreed to classification and negotiated rate unless changed by agreement.

3. Carrier shall compensate M. E. Stewart or the incumbent of the position of Agent, Garnett, Kansas, 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 29, 1961 and continuing until the proper rate is restored.

CLAIM NO. 2

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

2. Carrier shall restore the agreed to classification and negotiated rate of pay to this position beginning with Monday, May 29, 1961 and shall retain the agreed to classification and negotiated rate unless changed by agreement.

3. Carrier shall compensate S. F. Brubaker or the incumbent of the position of Agent, Westphalia, Kansas, 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 29, 1961 and continuing until the proper rate is restored.

EMPLOYES' 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 60 of the agreement are the positions of agent-telegrapher at Garnett and Westphalia. The rate for the agent-telegrapher at Garnett is shown as \$1.97 per hour, while Westphalia is shown as \$1.685 per hour. The rates of these two positions on May 28, 1961, by agreement, were Garnett \$2.745 per hour and Westphalia \$2.46 per hour, respectively. There is also shown in the wage scale for July 1, 1960, a telegrapher-clerk at Garnett seven days per week rated at \$2.47 per hour. The telegrapher-clerk position at Garnett was abolished after July 1, 1960, and the work of that position added to the agent-telegrapher.

It will be noted from examining the rates of pay on this Seniority District for agent-telegraphers that there is no uniform rating in the agent-telegrapher classification. There was a difference in rates at Garnett and Westphalia of 28½ cents per hour.

There have been positions at Garnett and Westphalia under the agreement with this Organization since the first agreement between the parties dated November 1, 1892. The positions were negotiated into the agreement and in that agreement were rated at \$30.00 and \$35.00 per month, respectively. It will be noted that the Westphalia rate was higher than at Garnett. In the agreement of 1909, the agent-telegrapher position at Garnett advanced to \$99.00 per month, with the Westphalia position being put at \$70.00 per month. Previous to that time the Westphalia position had been higher rated than Garnett. In the agreement of 1913 the telegraphic duties were removed from the Garnett agent and his rate continued at \$99.00 per month while the agent-telegrapher at Westphalia was advanced to \$71.50. This is an example where the telegraph duties were removed by agreement from a position while there was no reduction in rate of pay. In 1919 both of these positions became hourly rated by agreement, still maintaining the substantial difference in rates of pay and continuing Garnett as a straight agent with no telegraphic duties.

Garnett continued this non-telegraphic status until the agreement of 1942 when the first-trick telegrapher position was abolished and the agent assumed the first-trick telegraphic duties with no increase in pay for such additional work. The agency at Garnett then became an agent-telegrapher position and was hourly rated again and Westphalia continued as an agent-telegrapher on an hourly rate. Garnett was rated at \$1.05 per hour with Westphalia rated at 81 cents per hour. Between 1942 and 1949 this 24 cent differential in rates was widened again by agreement to 28½ cents differential which existed on May 28, 1961.

The above recitation of the various positions at both locations throughout the years with the changing rates of pay is shown above so that your Board will understand that the parties never intended to establish fixed rates of pay for any position simply because of or due to the absence of telegraphic duties. The fact that the changes had occurred throughout the years by agreement between the parties is enough to show that the Carrier had remedial measures had there been a need for a change and had they chosen to make use of the rules of the agreement to do so.

Under the agreement in effect the parties have authorized to negotiate rates of pay the General Chairman for the Employees and the Chief Personnel

however, not to recognize agreements of its own making and would not lend its concurrence to the Carrier in the handling given in this reclassification. As previously stated, Rule 2(c) clearly shows that the agreed to compensation to be allowed positions of Agent-Restricted Operator is settled and is incorporated as a specific rule in the Telegraphers' Agreement.

There are only two elements in the situation that are subject to disagreement; namely, the question of adequate fluctuation in duties and responsibilities of the position as referred to in Rule 2(f2) and conformity with positions of the same class in the seniority district as referred to in Rule 2(b). The Carrier has shown the telegraphic and train order duties were taken from the point reclassified, which is an element of fact and facts are not negotiable. The next matter for consideration is that 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 the Employees do not have 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 adjustment in rates.

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 Garnett under the applicable rules agreed to by the parties.

The contentions of the Organization of the Employees and 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: Only the dates, locations and named claimants differ from those submitted to this Board in Award 13895 of this Division, otherwise the claims presented herein are essentially the same since the same parties, Agreement rules and position reclassifications are involved here too.

For the reasons which we expressed in Award No. 13895 we will also deny the claims presented herein.

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.

Claims 1 and 2 denied.

AWARD

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.