

Award No. 13898
Docket No. TE-14280

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 Company, that:

1. Carrier violated the Agreement between the parties when it arbitrarily and without agreement reclassified and reduced the rate of pay on the position of Agent-Restricted Operator at Arma, Kansas, to that of a small non-telegraph-monthly rated agency.

2. Carrier shall restore the negotiated rate of pay to the Arma, Kansas, agency and shall pay all incumbents of the position beginning with December 1, 1961, at the negotiated rate of pay for the position.

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 58 of the Agreement is the negotiated position of Agent-Telegrapher at Arma, Kansas, with a negotiated rate of \$1.61 per hour. By arbitrary action this Carrier reduced the rate of pay of the Arma Agency to \$2.265 per hour several years ago and again acting without agreement reduced it on December 1, 1961, to \$364.35 per month. There were no small non-telegraph-monthly-rated positions on this Seniority District.

On November 22, 1961, Assistant Superintendent C. T. Graham sent the following letter:

"Nevada, Missouri
November 22, 1961

Messrs. G. E. Dance, St. Louis
Attention Stations Timekeeper
J. W. Bright, Local Chairman, ORT, Webb City, Mo.
V. G. Dyer, Kansas City

Effective December 1, 1961, the rate of Agent at Arma, Kansas will be \$364.34 per month.

formity with Rule 2(b) "by agreement between the parties of this agreement." Keeping in mind that Rule 2(b) require that the "rate of pay will be fixed in conformity with positions of the same class," it is apparent where there is only one rate of pay for an agency of a certain classification, as in the case of small non-telegraph agencies, that the area of "agreement between the parties" is limited to agreement as to the classification into which the agency falls. Here there is no question that all of the communication lines except the commercial telephone were removed and that the duties and responsibilities of the Agent at Arma were such that the position falls into the classification of a small non-telegraph agency. The General Chairman has never contended that the Carrier improperly reclassified the position as a small non-telegraph agency. There is no other classification into which the agency at Arma could fall. The only question raised by the General Chairman was his effort to prevent the Carrier from fixing the rate of pay in conformity with other positions of the same class. In view of the mandate in Rule 2(b), it is apparent that the parties have no alternative but to fix the rate of pay in conformity with the rate of pay for other small non-telegraph agencies. Here again the General Chairman has not disputed that the rate of pay of \$364.35, effective December 1, 1961, was the rate of pay for other small non-telegraph agencies.

Based on the foregoing record, it is apparent that the duties and responsibilities of the Agent at Arma had decreased substantially and that such change had been of a permanent nature continuously accruing for a number of years. The Agreement recognizes the right of the Carrier to reclassify positions under such circumstances. The Employees do not dispute the Carrier's action in reclassifying the position at Arma as that of small non-telegraph agent. The rate of pay was "fixed in conformity with positions of the same class" as required by Rule 2. It follows that the Carrier complied with the requirements of the Agreement in fixing the rate of pay of the position at Arma and that the Agreement was not violated as alleged by the Employees. The claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's agent at Arma, Kansas had been classified as "agent-restricted operator" and paid an hourly rate of \$2.265 until December 1, 1961, on which date Carrier reclassified the position to a small non-telegraph-monthly rated agency at a rate of \$364.35 per month. The record discloses that Carrier had previously removed all communication lines from the station except those used for commercial telephone calls.

It is not disputed that the latter mentioned rate was new to the seniority district, though it did apply at some points on Carrier's property, nor that the monthly rate was set as a result of a unilateral act by Carrier not concurred in by this Petitioner.

The Petitioner alleges an agreement violation as a result of the reclassification without its concurrence and requests in its claim that the previously negotiated rate of pay be restored to the position so that all incumbents thereof might receive what Petitioner alleges to be the proper rate, i.e., \$2.265 per hour from December 1, 1961.

Were it not for the fact that the record shows the Arma station to have been closed and abandoned effective March 18, 1963, pursuant to authority of the Kansas Corporation Commission, it would be necessary that we make a finding that Carrier's act of reclassifying the position was either proper or

improper for unless it was the latter we would be concerned with the question of whether Carrier could reduce the rate of the position and if so, what the rate should be. However, because of having previously found above that the monthly rate set by Carrier was new to the seniority district embracing Arma, and having previously said in Award No. 13895 that in a factual situation such as is now before us, there is mandatory requirement imposed by Rule 2(b) of the Agreement for the parties to negotiate a rate of pay for a reclassified position, we are not called upon to decide that issue but instead we are constrained to find that Carrier violated the terms of the Agreement between the parties when it put into effect a rate of pay for a position that had neither been paid within the seniority district nor agreed upon by the Petitioner.

We are of the opinion that the prior incumbents of the position in dispute at Arma should be correctly compensated for all time which each worked subsequent to December 1, 1961 and that such compensation should be at the rate received before the position reclassification and rate reduction occurred.

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 violated.

AWARD

Claim sustained in accordance with above Opinion and Findings.

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.