

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20943
Docket Number CL-20857

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(**Employees**

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7600) that:

1. Carrier violated Paragraph 5 of the May 8, 1972 Letter of Understanding when, beginning July **1**, 1973, it arbitrarily reduced the rate of pay of the Division Relay Telegrapher position at **Nevada**, Missouri, from \$5.2622 per hour to \$5.0155 per hour (Carrier's **File** 380-2973).

2. Carrier shall now be required to compensate Swing Division Relay Telegrapher N. E. **Talley** or his successor(s) for eight **hours** each day at pro rata rate, for the difference between \$5.2622 and \$5.0155 per hour, plus all subsequent wage increases beginning July **1**, 1973 and continuing each subsequent work day, Sunday and Monday of each week until the violation **is** corrected.

3. Carrier shall now be required to compensate Division Relay Telegrapher M. B. Reynolds or his successor(s) for eight hours each day at pro rata rate, for the difference between \$5.2621 and \$5.0155 per hour, plus all subsequent **wage** increases, beginning July **3**, 1973 and continuing each subsequent work day, Tuesday through Saturday of each week until the violation is corrected.

OPINION OF BOARD: This dispute involves a Letter of Understanding dated May 8, 1972. which states, in pertinent part:

"It was also understood that in the event relay work at Nevada is eliminated in the future, the rate of the Division Relay Telegrapher position will be reduced to comparable positions at Nevada, **Missouri**."

Carrier notified the Organization by Letter dated June 26, 1973 that ". . .the relay work has been eliminated at Nevada, Missouri with the elimination of the patch board and wires" and reduced the **Division Relay Telegrapher** position's rate to that of the Telegrapher-Clerk at Nevada. It is agreed that Carrier replaced its old communications circuits (including patch board) at Nevada with an IBM 1050 which was

part of an over-all computerized **communications** system embracing most of Carrier's Locations. With the advent of the IBM equipment all messages were punched on cards and fed into the terminal for transmission to the centralized computer in St. Louis. from which point the **informa-**tion was passed on (switched or relayed) to the final destination.

Petitioner makes a number of related arguments in support of its Claim. First, it is alleged that the upgrading of the communications system by the elimination of the old and outdated wires and patch board equipment does not eliminate relay work per se. It is argued that an IBM 1050 is at most semi-automatic and must be operated by a person; further **that** equipment relay work is performed through an IBM 1050 machine operated by the Division Relay Telegrapher. The Organization further contends that Carrier predicated its reduction of the rate erroneously on the elimination of equipment rather than on the elimination of the work **in** question. Throughout the handling on the property the Organization reiterated its contention that relay work was performed at Nevada on a continuing basis after the equipment was changed. The **Organization re-**lies on the clear and unambiguous language of the May 1972 Agreement, *supra*, and cites a number of Awards indicating that this Board lacks authority to change or modify agreement provisions.

Carrier's position may be well epitomized by the letter to the General Chairman by the Director of Labor Relations, dated November 15, 1973:

"Our understanding of May 8, 1972, was predicated on the elimination of the **communication** equipment at Nevada for which the higher rate of pay applied. As you were advised, the patch board and wire circuits were eliminated at Nevada and an IBM 1050 was installed to automatically handle messages received and transmitted. The IBM 1050 machine is used at many other points on this property by clerical **em-****ployes**, and is not of such a technical nature for which a higher rate for its operation would apply. The primary reason for retaining relay offices in the first instance was for their experience in wire work, and the relay office was Located at strategic points because of the circuit connections. Relay telegraphers have never been used exclusively to relay messages, as this has been performed, and continues to be performed, by division telegraphers at many points on this Carrier's property.

Relay work per se was eliminated at Nevada when the patch board and **communications** circuits were eliminated; therefore, in Line with our understanding of May 8, 1972, the rate of the Division Relay Telegrapher at Nevada was automatically reduced to that of a comparable position at Nevada...."

The Carrier further asserted that any relay of information, after the IBM installation, was performed automatically by the computer at St. **Louis**. It is argued that the only manual work required at Nevada is that in connection with the preparation of the key punched card for placement in the machine's hopper. Carrier maintains that the Organization has furnished no evidence to support the contention that **Nevada** continued to function as a relay station. Carrier claims that Petitioner furnished but one example in support of its position and that related to a track foreman phoning slow order information to the Agent at Reed Springs, who in turn telephoned it to the agent at Nevada who cut a punch card for the computer. Carrier claims that the relay work was performed by the agent at Reed Springs and the computer at St. Louis.

It is clear that the term "relay work" as used in the May 8, 1972 Agreement is ambiguous. Further it is noted that at no time has Petitioner attempted to clarify **what** it deemed to be relay work. Carrier, on the other hand, took the position throughout the handling of the dispute, that the unique and distinguishing duties of the Division Relay Telegrapher position was the wire work at points where various circuits were connected. It appears that Petitioner bases its claim on the theory that the IBM machine is now doing the relay work; however at no **time** did Petitioner identify any work unique to the **Re-**lay position which continued after the installation of the automatic equipment.

It is well established that the burden of proving all essential elements of its claim rests with the Petitioner (Awards 19306, 19822, 19372, 19501, 19670 and a host of others). In this case a careful examination of the record reveals no evidence whatever in support of Petitioner's contention that relay work continued at Nevada after the installation of the IBM equipment. A mere assertion, no matter how often repeated, is not probative evidence (Award 12685). Since Petitioner has failed to prove that the May 8, 1972 Agreement was violated, the Claim will be denied.

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.

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Claim denied.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
BY Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.