

Award Number 233
Docket Number TE-235

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE & OHIO RAILROAD COMPANY**

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers on the Baltimore and Ohio Railroad that the position of Agent at West Salisbury, Pennsylvania, shall be bulletined and filled from the Telegraphers' Seniority Roster in accordance with Article 4 of the Telegraphers' Agreement and at the established hourly rate shown in said agreement (67¢)."

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

The carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement is in effect between the parties bearing date of July 1, 1928, as to rules, and May 16, 1928, as to wage rates.

The parties jointly certify to the following facts:

"Previous to February 23rd, 1932, we had an established agency at West Salisbury, Pa., the force consisting of an Agent and one Clerk; however, due to the falling off in business the position of Agent was abolished February 23rd, 1932, and the accounts transferred to the Agent at Meyersdale, Pa. The Agent was retired and the Clerk was retained on duty at West Salisbury to report to and work under the jurisdiction of the Agent at Meyersdale."

This case was previously submitted to the Telegraphers' Adjustment Board, created pursuant to the provisions of the Railway Labor Act of 1926 by an agreement between the parties dated June 10, 1929. The board consisted of two members appointed by the carrier and two by the employees, and Article 9 of the agreement authorized the Board to make decisions "which shall be final and binding upon both parties, and both parties shall abide by such decisions." On June 23, 1932, the parties made a joint submission to the Telegraphers' Adjustment Board, setting forth in substance, though in more detail, the facts outlined above. The action requested by the employees in bringing the case before the Telegraphers' Adjustment Board was "that the station at West Salisbury be placed in charge of a qualified employee under the jurisdiction of the telegraphers' agreement." The decision of the Board (Case No. 52, Session of July 20, 21, 1932) recited the request of the employees and concluded that "the position of the committee is sustained."

What is the meaning of this decision? It can only mean that the agency at West Salisbury had not in fact been abolished, for otherwise the position of the employees that that station should be in charge of an employee under their agreement could not have been sustained. The decision did not state that the

position of agent should be restored to West Salisbury, but left open the title and rate of pay of the position that was to be bulletined in accordance with the decision. The employees had not specifically asked in submitting the case that the position of agent be restored, presumably expecting after a favorable decision to adjust the matter with the carrier, taking into account the reduced business at the station and the reduced importance of the position following the transfer of the accounts to Meyersdale.

Following the decision, the carrier advertised a vacancy of assistant agent at West Salisbury at a rate of 53¾ cents (the agent's rate was 67 cents), but after a protest from the employees the bulletin was withdrawn and the vacancy listed as cancelled. Efforts to adjust the matter by negotiation failing, the parties on April 12, 1933, referred the matter back to the Telegraphers' Adjustment Board for "further hearing", but for some unexplained reason they did not state in their submission what it was that they wished the Board to decide. At its session on July 28 and 29, 1933, the Board considered the matter and took no action, referring the case back to the parties on the ground that no specific request had been made upon which action could be taken. The employees thereafter again attempted to settle the matter with the carrier but without success and the case is now before our Board. Nothing in the present record indicates that there has been any change in the situation as it was presented to the Telegraphers' Adjustment Board. The only new fact in the present record and one which supports the employees rather than the carrier, is that the clerk at West Salisbury had, at least until recently, been depositing collections in the bank designated by the carrier instead of, as the company's regulations require, transmitting them to the Agent at Meyersdale.

Since the principal issue in the case, namely whether the agency at West Salisbury has in fact been abolished, was decided in the negative by the Telegraphers' Adjustment Board under a joint submission, and since the parties agreed in advance to be bound by the decision, we are in turn bound to recognize and apply the decision. The decision is not a mere precedent which we might disregard if we wished. It is the equivalent of an arbitration award which by agreement binds the parties. The function of our Board is to interpret and apply agreements between the parties. The agreement of the parties to accept the decision of the Telegraphers' Adjustment Board is before us and we can no more disregard it than can the parties. The fact that the decision settles only the main issue and leaves open the question of classification and rate is immaterial. That subsidiary question was not submitted to the Board. The question submitted was whether the station at West Salisbury should be placed in charge of a qualified employee under the telegraphers' agreement, and that question was answered in the affirmative, necessarily upon the view that the agency had not been in fact abolished.

The parties must accept that determination and the only question now before us is the classification and rate of the position which should be bulletined. In deciding this question, we cannot consider what might be equitable but only what the telegraphers' agreement calls for. The only position listed in the agreement for West Salisbury is the position of agent at a rate of 67 cents. Since the decision of the Telegraphers' Adjustment Board means in substance that the agency has not been in fact abolished we have no recourse but to hold that the position of agent should now be bulletined at the established rate in accordance with the agreement. There is no other position or rate of pay at West Salisbury under the agreement for us to select. If because of reduced business at West Salisbury and the lesser work resulting from the transfer of the accounts to Meyersdale, a lower classification and rate of pay should in fairness be established, that is a matter which can only be adjusted by agreement between the parties. We cannot make the adjustment for them.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 9th day of April 1936.