

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI PACIFIC RAILROAD COMPANY**

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers on Missouri Pacific Railroad, that the agreed schedule basic hourly rate of pay of sixty-five (65) cents for the three positions of telegrapher-towermen at Van Buren, Arkansas, be restored and applied retroactively to the date the rate was arbitrarily reduced to fifty-eight (58) cents by the carrier on May 16, 1935."

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

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 January 1, 1930.

Three positions of telegrapher-towermen at Van Buren are included in Telegraphers' Schedule Agreement at an hourly rate of sixty-five (65) cents.

It has been urged at the outset that the Board ought not to take jurisdiction of this case because of a variation between the original statement of the claim by the employees when the proceedings were initiated (on the basis of which the carrier prepared and filed its submission) and the statement of the claim as later filed with the employees' submission. The original statement described the dispute as follows:

"That of the action of the carrier in arbitrarily reducing the hourly rate of pay for the three telegrapher-towermen at Van Buren, Arkansas, to fifty-eight (58) cents from the agreed schedule rate of sixty-five (65) cents without agreement with the Committee."

The statement filed with the submission appears above. The only differences between the two statements are:

(1) The second asks that the positions and pay be restored, which is merely a request for relief based upon precisely the same grievance as that expressed in the first statement. There is nothing misleading in adding this prayer for relief.

(2) The first statement complains of arbitrary reduction "without agreement"; the second omits the words "without agreement." There is nothing misleading in this, for a reduction, to be arbitrary, would necessarily have to be made without agreement.

(3) The second statement gives the date of the reduction, but the carrier's answer shows that it was perfectly aware of the date and of all the matters complained of.

In any event the carrier was given thirty days after the hearing in which to answer the employees' submission; and the carrier availed itself of this privilege. We think that the carrier's rights have not been prejudiced and that we may properly consider the dispute on its merits.

Prior to May 16, 1935, railroad telegraph and telephone lines were in operation in the tower at Van Buren, by means of which the three telegraphers handled train orders, messages, and reports of record for the Missouri Pacific and the Frisco, the office being a joint one but operated and controlled by the Missouri Pacific. The tower also was equipped with 32 manual levers. It was located at an intersection of the Missouri Pacific and Frisco lines about a mile and a half from the Missouri Pacific yard office, about half a mile from the Missouri Pacific ticket office, and about a mile from the office of the Frisco agent.

On May 16, 1935, the railroad telegraph and telephone lines were removed and the three positions were reclassified from telegrapher-towermen at 65¢ an hour to levermen-clerk at 58¢ an hour. On May 22, 1935, a commercial telephone line was installed in the tower for the use of the levermen.

The duties of the three men in question prior to these changes were as follows. They operated the signals and switches. They checked cars left on the transfer track for interchange movement, and by telegraph or telephone notified the agent operator of the Missouri Pacific or the Frisco, at Van Buren, of the arrival of these interchange cars. By telegraph or telephone they submitted consist reports of record and received and forwarded interline shipment reports of record. They transmitted, received, and delivered train orders messages and clearances.

After the removal of the railroad telegraph and telephone lines and the installation of the commercial telephone the employees continued to perform the same services as before except that they were not required to handle (save in one exceptional instance noted in the record) train orders or clearances. Their other duties remained unchanged, the commercial telephone being used to communicate with the yard office in the switching of incoming trains and the interchange of cars, and to transmit the daily consist and interline shipment reports of record to the Frisco agent at Van Buren. There is no real dispute as to these facts. The carrier has admitted that the levermen are performing the same clerical work as before, and are transmitting the same reports. The only difference is that they are no longer handling train orders or clearances, with the exception of the one case noted in the record. The employees have alleged that train orders are "occasionally" handled but the record shows only one such instance, and we do not think it is of significance, except as showing the relatively high degree of responsibility attached to the positions.

The first question is whether in the light of the other duties of the positions and the continued daily use of the telephone in connection with the switching and interchange of cars and the transmission of reports of record, the positions could properly be reclassified to those of levermen-clerk upon the substantial elimination of the handling of train orders and clearances.

The agreement between the parties does not define the functions of the several positions listed therein, but the employees contend that these functions have been well understood and are embraced in definitions established during the period of federal control of the railroads. Thus in the decision answering Question 5 (e) under Interpretation 4 to Supplement 13, General Order 27 of the United States Railroad Administration, it was stated that—

"the use of the telephone to transmit or receive messages, orders, or reports of record in lieu of the telegraph carries to the positions the provisions of supplement No. 13."

It will be noted that the reference to the handling of reports of record is in the alternative and that the handling of train orders is not specified as essential. Another similar decision answering question 5 (j) indicated that the terms "telegraph operator" and "telephone operator" were synonymous, and the U. S. Railroad Labor Board in Decision 2051, December 3, 1923, held that

"the changing of positions from telegrapher to telephoner does not create new positions nor does it materially change the duties of the employees filling such positions."

If these decisions can be regarded as controlling we would have to hold that since the employees are still handling reports of record by telephone they are still telegraph or telephone operators, which are synonymous terms, and that the reclassification was therefore in violation of the agreement. The carrier has stated that these decisions are not applicable to the situation at Van Buren without further arguing the point. The carrier has also stated that the telephoning of reports consumes but fifteen minutes a day of the time of each of the three employees, and there is no specific denial of this statement in the record. On the other hand, the carrier submitted a schedule showing the number of train orders, message of record, and clearances handled at the tower during the 30 days prior to the removal of the telegraph and telephone instruments, and this schedule showed an average of about one train order per day per employee, and a fraction over one clearance per employee per day, from which it is apparent that the handling of train orders and clearances must have consumed a negligible portion of the employees' time. The schedule also showed an average of a little over five messages of record per employee per day, but from all that appears these messages of record may be included in the duties now performed by the employees.

As further bearing upon the question of classification a statement by the employees appears in the record to the effect that:

"Any leverman's position being required to additionally perform telegraph, telephone, or clerical duties would be subject to a higher rate than the minimum leverman's rate of 58¢ per hour."

This statement seems to imply that employees classified as levermen may be assigned telegraph, telephone, or clerical duties subject to the establishment of a proper rate of pay. Other statements in the record seem to indicate that the line between particular classifications is not always a hard and fast one and that various sub-classifications such as "leverman-clerk", "telegrapher-cashier", and "telegrapher-clerk" are in effect although these sub-classifications are not spelled out in the agreement.

On the whole we do not think that the question of classification can be decided with any certainty on the basis of the record before us although the decisions relied upon by the employees, which are not adequately answered by the carrier, would indicate that the telephoning of reports of record stamps an employee as a telegrapher. However, if we take a realistic view of the case the essential issue appears to be the rate of pay rather than the particular title to be assigned to the jobs. So far as the record discloses the question of classification is one rather of form than of substance and the real question is the rate of pay, for the schedule of positions attached to the agreement shows that there are some levermen who are paid at a higher rate than the telegraphers in this case were formerly receiving, and also that there are some telegraphers receiving less than the employees in this case are now receiving as levermen.

That the real question was the adjustment of pay rather than the abolition of old positions and the creation of new ones is further indicated by the fact that in the latter case the new positions should have been bulletined in accordance with Article XI of the agreement, and the employees whose positions were abolished would have had a right to displace to other positions in accordance with the seniority provisions of Article X. This was not done, however. The three employees continued on at their old positions in the tower. Whatever their title may have been before the change took place, they were working in the Van Buren tower devoting the bulk of their time to the operation of signals and switches, the checking of cars for interline movement, and so on, and in addition the handling of train orders, clearances, and reports of record. After the change they did all of these things as before except the handling of train orders and clearances, and the employees contend that their work was actually increased by the change because in the absence of any direct communication with the train dispatchers it was more difficult for them to get away from the tower to check the interchange cars. The carrier, however, felt that the modification in the work occasioned by the virtual elimination of the handling of train orders and clearances warranted an adjustment in pay and the matter was accordingly taken up with the General Chairman.

This brings us to the crux of the case. Shortly before the removal of the telegraph and telephone lines the carrier's representative called up the General

Chairman, said that the lines were about to be removed, and suggested 58¢ an hour as an appropriate rate for the men. The carrier states that at the end of the conversation the General Chairman agreed to a wage of 58¢ and that therefore no claim can be made in this case.

But the General Chairman says in substance that he acquiesced in the 58¢ rate on the express understanding that the levermen were to perform no clerical work, and that the rate of 58¢ had been previously established only with respect to levermen doing neither clerical work nor telephoning of the sort done at Van Buren. There is a dispute as to just what was said in this conversation, but the facts subsequent to the conversation bear out the contentions of the employees. The conversation took place, as has been said, shortly before the removal of the telegraph and telephone lines. The removal occurred on May 16, 1935. On May 20, 1935, only four days later, the employees' representative wrote the carrier that the levermen were performing the same clerical duties as before, that this was contrary to the General Chairman's understanding, and that unless the clerical duties were discontinued the 58¢ rate would be improper. On May 22, 1935, two days after this letter was written, the commercial telephone was installed and the levermen were required thereafter, as has been stated, to use it in connection with the switching of trains and the transmission of reports of record. On May 27, 1935, the General Chairman wrote the carrier protesting that the assignment of clerical duties and the additional assignment of the telephone work were not the proper functions of levermen. Further correspondence ensued but without result, and the case was then brought to our Board.

We think it fair to conclude from the record that no agreement was arrived at covering the type of service actually being performed at the Van Buren tower. The carrier's letters in response to the employees' protests contained no mention whatever of any such agreement, but simply stated in substance that the classification was a proper one. The employees' protests, made immediately after the changes took place, negative the idea that they had bound themselves to a 58¢ rate regardless of the nature of the services; and their letters, like the carrier's letters, make no reference whatever to any agreement.

If, as the evidence quite clearly establishes, there was no agreement that services including clerical and telephone duties should be paid for at a 58¢ rate, was the carrier within its rights in establishing and insisting upon such a rate? We think not. Since the adjustment could not be made with certainty but would involve many questions of fact it should have been taken up with the employees and negotiated in an orderly fashion. The only negotiation which took place was over the telephone and, as already stated, no agreement resulted because the employees did not understand that clerical duties, much less telephone duties, were to be involved. We think that something more than this is required from the management when they undertake to change old wage rates or establish new ones for the fixing of which there is no formula in the agreement.

The difficulty involved in the determination of rates is illustrated by the carrier's statement that—

"in each tower where there are employed towermen listed in the Telegraphers' Agreement, such as at Leavenworth, Falls City, Conlogue, St. Louis-Grand Avenue, and other points, all parallel cases to the Van Buren situation, there is a telephone in the tower and used by the levermen in much the same manner and for the same purposes as is done at Van Buren."

But the employees have stated that at Leavenworth the tower had been changed to a centralized control tower in November 1930 and telegraph and telephone instruments installed with classification of telegraph-towerman at 75¢ per hour; and at Falls City the tower had been converted on January 1, 1934, to a relay-telegraph-tower office with rates increased from 58¢ to 87¢, 80¢ and 80¢ respectively for the three tricks. The employees further stated that prior to these changes there were no telephones of any character in these towers and that the positions had been classified as non-telegraph levermen at 58¢ per hour, with no clerical, telephone, or telegraph duties whatever. In the case of Conlogue, the scheduled rate of the levermen, as shown by the agreement, is 62¢ an hour, which is above that being paid the levermen at Van Buren, while at St. Louis-Grand Avenue the rate of the levermen is 74¢, which is above that formerly paid the telegraphers at Van Buren.

These figures lend weight to the employees' contention that the only 58¢ rate for levermen is where they are performing no clerical duties, much less any telephone duties of the sort performed here. The figures also indicate that the fixing of a rate was something which could not be done by rule of thumb but would require negotiation and full consideration of the nature of the services performed at Van Buren and elsewhere. Instead of undertaking such negotiations the carrier, on the basis of a single telephone talk in which less than all the facts were presented to the employees, undertook to fix the rate and, despite the immediate protest made after the nature of the services was ascertained by the employees, refused to make any attempt to adjust the matter. There is no warrant in the agreement for any such one-sided action. The 58¢ rate was improperly fixed and the original rate should be restored.

Our conclusions may be summarized as follows:

(1) The change at Van Buren modified the duties of the employees only to the extent that the handling of train orders and clearances was virtually eliminated. This particular work seems to have been only a small portion of their duties. They were still required to transmit reports of record by telephone which is work customarily performed by employees classified as telegraphers. It may be that this work can only be performed by men classified as telegraphers, but we do not need to decide that point, and there is at least some indication in the record that employees classified as levermen have in certain instances been using the telephone for such purposes.

(2) In any event the real question was not one of classification but of pay. The classifications seem to have been rather indefinite and the men were kept on at their jobs without any formal abolition of their old positions and without bulletining the new ones.

(3) There was no agreement between the parties establishing the 58¢ rate for the services which were in fact performed and the record sufficiently shows that the only levermen carried at a 58¢ rate were those performing no clerical or telephone work. There were no levermen whatever on the particular division and the rates of levermen elsewhere varied, some being actually higher than the old telegraphers' rates at Van Buren. There was no formula in the agreement by which any specific rate for the employees at Van Buren could be fixed below the rate originally agreed upon.

(4) Under all the circumstances of this case we hold that any reduction in the original rate could only be made by agreement between the parties. Such an agreement was not reached.

Because of the nature of the record in this case nothing in this opinion should be taken as a precedent in any later case.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 30th day of April 1936.