

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that Telegrapher G. E. Carey was improperly displaced from his regularly assigned position as agent at Edgewood, Calif., on November 26th, 1932; that he be restored thereto and compensated in full for any monetary loss resulting from the Carrier's action in removing him from his assignment."

STATEMENT OF FACTS.—The employes submitted ex parte the following statement of facts:

"August 19th, 1932, the Southern Pacific Company (Pacific Lines) filed application with the Railroad Commission of the State of California for authority to establish a part time agency at the stations of Gazelle and Edgewood, Sacramento Division. The authority was granted by the Railroad Commission of the State of California, September 6th, 1932, and by virtue of such grant a part time agency was established by the Southern Pacific Company (Pacific Lines) at Gazelle and at Edgewood, November 26th, 1932, the stations being open approximately as follows:

Gazelle, 7:35 A. M. to 8:35 A. M.; 1:15 P. M. to 4:35 P. M.
Edgewood, 8:55 A. M. to 11:55 A. M.

"Coincident with the establishment of the part time agency at Gazelle and Edgewood, Agent G. E. Carey who had been assigned to the position of agent at Edgewood under the provisions of the Telegraphers' Agreement was removed therefrom and the regularly assigned agent at Gazelle was required by the carrier to take over the part time agency at both points. Neither agency was abolished. Separate accounts are kept at both agencies."

The carrier's statement of facts was incorporated in the statement of its position as set down below.

An agreement between the parties bearing effective date of September 1, 1927 (Wage Scale effective May 1, 1927), was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYES.—After alleging, on the basis of the official records, that authority for abolishing the agency at Edgewood was neither sought from nor granted by the California Railroad Commission, and that the position of agent-telegrapher at Edgewood had not in fact been abolished, the employes submitted their contentions as follows:

"1. The rules directly involved in this dispute are Rules 5 and 9 and indirectly, that portion of Rule 19 (c) which provides for the bulletining of positions and assignment of telegraphers thereto, the latter rule, 19 (c), being involved in this dispute only to the extent of setting up that Telegrapher Carey was privileged to and did acquire the position of agent at Edgewood under the provisions of the Telegraphers' Agreement.

"12. It was not until the depression, which became acute in approximately 1930, that occasions often arose (by reason of decrease in business or otherwise), making it necessary or desirable to abolish positions of Agent and require an agent at another station to assume jurisdiction as agent over the two said stations; nevertheless, it was done from time to time prior to 1930, as evidenced in the cases of Lowell-Bisbee and Watsonville-Watsonville Junction, and, there are numerous other cases where this has been done prior to 1930; subsequent to 1930 it has been necessary to follow this practice in perhaps eight or ten cases.

"13. Inasmuch as no rule of the Telegraphers' current Agreement has been violated, the petitioner is in effect requesting your Board to establish a new rule which, of course, cannot be legally done under the provisions of Section 3 of the Railway Labor Act, and in connection therewith, attention of the Board is directed to its Award 109, dated October 15, 1935, wherein the Board stated that—

"It is not within the province of this Board to add or to take away language from an agreement made between the parties. In this case it would be necessary to alter the existing agreement between the parties in order to support the contention of the petitioner."

If the petitioner's request, also the claim, is granted it will have the effect of altering, by adding language to the Telegraphers' current Agreement, which, of course, it is not within the jurisdiction of the Board to do, and would constitute an act which the Board in Award 109, is committed against performing.

"14. The Carrier requests the Board to deny the claim and request of the petitioner on the grounds that the National Railroad Adjustment Board, Third Division, cannot lawfully assume jurisdiction of the claim and request; that the Railway Labor Act as amended June 21, 1934, does not apply to the claim and/or request; that no legal claim exists and that request is for a new rule, which cannot be granted under Section 3 of the amended Railway Labor Act; that the Carrier has not violated any rule of the Telegraphers' Current Agreement; that the Carrier is not required to maintain two positions where one position is all that is necessary."

OPINION OF BOARD.—The facts of record disclose that the case here presented for adjustment was pending and unadjusted on the date of the approval of the Railway Labor Act as amended June 21, 1934—the protest of the Local Chairman of the Order of Railroad Telegraphers filed January 10, 1933, embraced all the essential elements of the instant dispute—and they disclose no irregularity in the submission of the claim which violated the provisions of the Railway Labor Act, or contravened the rules of procedure of this Board, or prejudiced in any way the rights and interest of the carrier. The contention of want of jurisdiction being without merit, the dispute must be determined on the basis of the facts of record and the applicable rules of the agreement.

The precise issue raised by the claim of the employees concerns the propriety of the displacement on November 26, 1932, of Agent-Telegrapher Carey, who then held the position at Edgewood expressly included in the agreement between the parties and which position as regularly assigned agent-telegrapher had been acquired by him in the exercise of his rights under the rules of that agreement. There can be no question that the carrier is free to abolish agencies and the positions existing at such agencies; and if the agency at Edgewood and the position of agent-telegrapher at that station had been abolished there would be no basis for the claim here submitted. In point of fact, however, the agency and position at Edgewood were continued, as were also the agency and position at Gazelle. The authority sought from and granted by the California Railroad Commission was to establish part-time agencies in place of the then existing full-time agencies at Edgewood and Gazelle, and in conformity with this authority the hours during which these agencies were to remain open were reduced; but there clearly was no abolition of the agency or position at either of these places. The carrier contends that the agencies were consolidated. If they had in fact been consolidated, one of them, including the position at that station, would have been abolished; but the evidence unquestionably shows that both agencies are being maintained as separate and distinct stations, rather than as a single consolidated agency, and that at each of these stations an agent-telegrapher is continuing to render the same service as was rendered there prior to the adoption of the new arrangement, except that the

hours have been shortened as authorized by the California Railroad Commission. There has merely been a consolidation of positions existing at two different offices, by requiring the agent-telegrapher at Gazelle to perform also the duties of agent-telegrapher at Edgewood, and thereby displacing the regularly assigned agent-telegrapher at that point. Nowhere in the agreement is there provision for the establishment of such position of "joint-agent," nor is there authority for the displacement of a regularly assigned telegrapher in this way. The conditions under which such an incumbent may be displaced are set forth in various parts of the agreement or generally accepted as a matter of practice, and these conditions do not embrace such circumstances as are here disclosed of record. More specifically, the creation by ex parte action of this position of "joint-agent," with the consequent displacement of the regularly assigned agent-telegrapher at Edgewood, contravened the guarantee provisions of the agreement, which were designed to afford to such incumbent the protection of a full day's pay every twenty-four hours even if on duty less than the required number of hours constituting a full day's service; in other words, whatever the rights of the carrier may be with respect to the establishment of such positions of "joint-agent" under other circumstances, they were not properly exercised when thus utilized to defeat these guarantee provisions of the agreement. The plan adopted by the carrier was doubtless induced by proper motives of economy, but since its execution infringed upon the terms of the agreement with its employees, the method of negotiation, rather than that of ex parte action, should have been followed.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 displacement of Agent-Telegrapher Carey from his regularly assigned position at Edgewood November 26, 1932, constituted a violation of the prevailing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON

Secretary

Dated at Chicago, Illinois this 25th day of February, 1937.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 388,
DOCKET No. TE-274**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: Southern Pacific Company (Pacific Lines)

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Since the claim was sustained without condition or limitation, the measure of relief to which the employee is entitled must be determined by the terms of the claim. These terms, based upon the contention that the employee was improperly displaced from his regularly assigned position, embraced two requests: first, that he be restored to his regularly assigned position; and second, that he be "compensated in full for any monetary loss resulting from the carrier's action in removing him from his assignment." The fact that the claimant is not now required to return to his former position is immaterial, since this arrangement was reached by agreement of the parties subsequent to the award. The sole issue concerns the extent of the compensation to which the claimant is entitled under the original award. When the claim as to compensation was sustained, it was sustained in the terms in which it had been submitted and argued on behalf of the employee; and this claim was not limited to net wage loss, but included "any monetary loss" resulting from the carrier's action. The substantive position of the carrier in the original proceeding had been directed solely to a denial that any provision of the prevailing agreement between the parties had been violated. The Board expressly found otherwise, and liability on the part of the carrier for the full measure of compensation as specified in the claim naturally followed.

Referee I. L. Sharfman, who sat with the Division, as a member, when Award No. 388 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1938.