Award No. 518
Docket No. TE-544

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

THE CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railways that: The position of Agent-Telegrapher, Greenfield, Oklahoma, rate sixty cents (60c) per hour, arbitrarily reclassified by the Carrier to non-telegraph agency, rate forty-eight cents (48c) per hour, be restored to original schedule classification and rate of pay, and that the employe affected be reimbursed retro-actively for any loss sustained by the Arbitrary reclassification."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"Effective November first, 1936, the Chicago, Rock Island and Pacific Railway Company reclassified agent-telegraph job at Greenfield, Oklahoma, which is shown in the Telegraphers' Contract with the Carrier at sixty cents (60c) per hour, to that of non-telegraph agency at a rate of forty-eight cents (48c) per hour."

An agreement bearing date of January 1, 1928 is in effect between the parties.

POSITION OF EMPLOYES: "For many years certain station, tower and telegraph employes on this railway have had a working agreement with the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railway Company, the scope rule of which reads:

> 'The following rules and rates of pay will govern the employment of telegraphers, telephone operators (except switchboard operators), agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators and staff men employed upon the lines of these railways as shown in this schedule and are herein referred to as telegraphers.'

"In the schedule of rates of pay of the current contract, a copy of which is attached hereto as exhibit 'A', under the caption: 'Kansas Division' on

non-telegraph agency at Greenfield, Oklahoma, was established on the basis of 48c per hour, this being in conformity with rates paid on existing positions of similar work and responsibility in the same seniority district.

"This was not, as alleged by the employes, an arbitrary reclassification of a position. The position of agent-telegrapher at Greenfield was abolished. A new position of non-telegraph agent was created. The rate of 60c per hour for the agent-telegrapher position was established to compensate the agent at that point for telegraphing in addition to the other duties ordinarily required of an agent, and that rate was established on the basis of the rate paid at comparable telegraph stations. When the particular feature—telegraphing—which warranted establishment of the 60c rate was discontinued and all instruments and appliances removed from the station and the agent no longer required to have a knowledge of telegraphing or do any telegraphing, it was entirely proper to consider that a new agency was established and pay the rate paid similar positions under the provisions of Article 2 (a) of the schedule. There is no restriction in the telegraphers' agreement that a position once established can not be abolished, nor is there any provision against establishing new positions, and the contract does provide a method to be followed in rating such new positions."

"The telegraphers' agreement in Article 22, and in the wage scale, provides for classification of non-telegraph agents at small non-telegraph stations with rate of pay of 48c per hour and assignment of a non-telegraph agent at the small station of Greenfield is therefore in accordance with the schedule, and we are not establishing a less favorable working condition or rate of pay than is authorized by the agreement. The station could just as well be closed entirely, but by maintaining it as a small non-telegraph agency it provides employment for an additional agent and places him in a position to accommodate the public and so serve them that when conditions justify on basis of their returning patronage, the higher rated position of agent-telegrapher can be restored."

OPINION OF BOARD: In this claim of the General Committee of the Order of Railroad Telegraphers that the position of Agent-Telegrapher at Greenfield, Oklahoma, was arbitrarily reclassified by the Carrier on November 1, 1936, to a non-telegraph agency, and changed from a rate of 60c per hour to 48c per hour without negotiations, various awards and decisions have been submitted by both the General Committee and the Carrier in support of their respective contentions.

In several of the awards and decisions cited as having a bearing on the issue involved, rulings have been made to the effect that in any changes in which the rules of the agreement between the employes and the carrier have been affected, or in which rates or positions that have been negotiated into the agreement have been changed, the carrier is equally obligated with the employes in following the same orderly process of conference and negotiation as when the agreement was originally negotiated; and the Board reaffirms such rulings insofar as they apply to this instant claim.

In the present dispute however, the conditions with reference to negotiation between the parties are reversed and the fact is evidenced that when in the opinion of the Carrier it became necessary to abolish the position of Agent-Telegrapher at Greenfield, Oklahoma because of unfavorable economic conditions, and to remove the telegraph work from that station and establish a non-telegraph agency at a lower rate of pay, the Carrier presented the matter of change to the authorized representative of the employes but was unable to secure the consent of the General Committee to the change that the Carrier some months later put into effect without conference or negotiation.

In support of the action upon which this claim is based, the Carrier submitted statements showing the reduced earnings at the station at Greenfield and stated that, in abolishing the position of Agent-Telegrapher and remov-

ing all telegraph instruments and service from the station, and in maintaining Greenfield as a small non-telegraph agency, provision was made for restoring the higher rated position of Agent-Telegrapher when and if business and patronage conditions would justify such action.

In the statement of the General Committee that the Carrier arbitrarily reclassified the Agency and that the change was made through the unilateral action of the Carrier, the facts are evidenced that the General Committee, while agreeing with the Carrier that the business and earnings of the station had been seriously reduced through drought and other conditions which had continued over a period of two or three years, declined to concur with the Carrier in reclassifying the station concerned and continued to urge upon the Carrier that no change be made, with the expressed hope that with a return of normal seasons the income of the station might be expected to increase.

In support of its action in declining to concur in reclassifying the station in dispute, the General Committee contends that the telegraphing at Greenfield has always been a negligible part of the Agent's duties and responsibilities and that the agency and the Agent's duties continued in almost the same volume after as before the change; while the Carrier, in determining the rate applicable to the new position alleged to have been arbitrarily created, had based such rate upon the rates existing at stations not comparable with Greenfield.

In view of the conditions outlined and the conflicting statements made with respect to the conditions existing as they pertain to the change which the Carrier put into effect on November 1, 1936, the Board is unable to determine the issues of this claim from the facts presented and rules that the claim be remanded to the parties to adjust their differences by proper conference and negotiations, or, failing in this, to resubmit their differences to the Board with a record of the facts brought out in such conference and negotiation.

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 employe involved in this dispute are respectively carrier and employe 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 facts of record are not sufficient to determine the points at issue and the claim is remanded for proper conference and negotiation between the parties.

AWARD

Claim remanded for conference and negotiation in accordance with last paragraph of the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 19th day of October, 1937.