

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE CHICAGO, ROCK ISLAND AND PACIFIC  
RAILWAY COMPANY**

**THE CHICAGO, ROCK ISLAND AND GULF  
RAILWAY COMPANY**

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

**STATEMENT OF CLAIM:** "It is claimed by the General Committee of The Order of Railroad Telegraphers that: In accordance with the Telegrapher's Contract with the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railways, and according to decisions of this Board as well as decisions of the United States Railroad Labor Board, the Carrier is violating its obligation to the Telegraphers when their agent at Hennessey, Oklahoma, who for the past several years has had Sunday and Holiday assignments of a call for meeting train No. 18 due there at 6:34 A. M., and a week-day assignment from 6:15 A. M. to 4:00 P. M., including 45 minutes overtime per day, when relieved of this Sunday and Holiday work and his week-day assignment changed from 8:00 A. M. to 5:00 P. M., and a city drayman (by whatever name the carrier desires to designate him) employed to meet this train every day, and take care of the mail and express which was about all the agent had to do. The Committee contends that the agent being the only employe at this station should perform this work and be given the calls on Sunday and holidays and his week-day hours changed back to the former spread so he can meet this train if it is the desire of the Carrier to have it taken care of. Also the agent should be paid a call for each Sunday and Holiday and forty-five minutes overtime for each week day from May 25, 1936."

**JOINT STATEMENT OF FACTS:** The parties jointly certified to the following statement of facts:

"Prior to May 25, 1936, the agent at Hennessey, Oklahoma, had a week-day assignment from 6:15 A. M. to 4:00 P. M., which included forty-five minutes overtime. He was called each Sunday and holiday and paid in accordance with the Telegraphers' Contract for meeting Train No. 18 due at Hennessey at 6:34 A. M. About May 21, 1936, the agent was notified by proper authority that effective May 25, 1936, he would be relieved of any Sunday and holiday work and from that date his week-day assigned hours would be from 8:00 A. M. to 5:00 P. M., including meal hour. The Agent was further advised that the person hired to meet Train No. 18 would be permitted to enter the depot for the purpose of handling business to and from this train."

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

dered service as per Article 4 (a) of the agreement; has paid for such overtime and calls as the agent has worked or made as provided in Article 4, sections (b) and (c) and has excused the agent from Sunday and holiday service as the conditions will permit in accordance with Article 4, Section (k). The working time of the agent has been assigned as provided in Article 4, section (f). The work performed by the custodian on week-days and Sundays is proper work for a custodian to perform and such method of handling the work at Hennessey is not a violation of the Telegraphers' agreement and the claim in this case should therefore be declined."

**OPINION OF BOARD:** In support of their contentions in this claim the General Committee of The Order of Railroad Telegraphers submit that Hennessey, Oklahoma, is a station listed in the current Telegraphers' Agreement and which, along with other listed employes, designates an Agent as coming within the scope of the Telegraphers' Agreement. The General Committee further submits that since the Agreement was negotiated all Telegrapher tricks had been abolished and the Agent is now required to perform as Agent-Telegrapher and, previous to May 25, 1936, he was assigned on Sundays and Holidays, together with an extra assignment of 45 minutes on week-days, to meet and work passenger train No. 18, due at Hennessey at 6:34 A. M., and for which the Agent-Telegrapher had been paid in accordance with the Telegraphers' Agreement.

On May 21, 1936, the Agent-Telegrapher at Hennessey was notified by the Carrier that, effective May 25, he would be relieved of his Sunday and Holiday assignment and his extra assignment on week-days, and the work would be handled by a drayman or custodian who would be permitted to enter the depot for the purpose of handling business to and from Train No. 18, and that the Agent's week-day assigned hours would be from 8 A. M. to 5 P. M., including meal hour.

The General Committee contends that in displacing the Agent-Telegrapher in the manner outlined and assigning the work to an employe outside of the Telegraphers' agreement, the carrier violated the scope and other rules of the Agreement existing between the parties, and cite various decisions and awards in support of their contentions.

The carrier contends that its entire liability is set out in the Agreement, and that if the Agreement does not provide extra or additional compensation for any particular service, or under any particular state of facts, that no extra or additional compensation can be awarded, and, among other conditions submit that this Board's jurisdictional authority is limited to consideration of the Agreement between the parties.

In further support of their contentions as to the absence of any rule in the Agreement which supports the instant claim, the Carrier submits various supplements and interpretations to General Order No. 27 issued by the United States Railroad Administration, together with other decisions and awards as having a bearing on the subject at issue, and cite paragraphs (e) of Article 4 and (a) and (h) of Article 6 of the Agreement which respectively places a limitation of 48 hours for the presentation of overtime tickets, 5 days for complaint as to unjust treatment, and 30 days for the presentation of other grievances.

Insofar as the carrier's contention is concerned with respect to the Board's jurisdictional authority being limited to consideration of the Agreement between the parties, and that, if the Agreement does not provide extra or additional compensation for any particular service or state of facts, no extra or additional compensation can be awarded, the Board agrees with the carrier that its jurisdictional authority insofar as it pertains to this instant case is limited to a consideration of the Agreement between the parties, and submits first, that the Agent at Hennessey is listed in the Schedule of Rules and Rates of Pay in the current Agreement: Second, that the scope and other rules of the Agreement defines both the character of work that is

to be rendered by the employees and the conditions under which that work is to be performed; and, third, the conditions that apply when the classification or work is changed by which a less favorable rate of pay or condition of employment is established, or when rules are to be changed that have originally been negotiated into the Agreement between the parties.

As for the application of paragraph (e) of Article 4, and paragraphs (a) and (h) of Article 6 of the Agreement, which places limitations of 48 hours for the presentation of overtime tickets, of 5 days for complaint as to unjust treatment, and 30 days for the presentation of other grievances, the Board submits that this claim does not represent overtime, unjust treatment or grievances in the sense in which the terms are used in the Agreement, this claim is made by the General Committee of The Order of Railroad Telegraphers, one of two parties to an Agreement or schedule of rules and rates of pay between the employees and the carrier, and is a contention of one of the principals of an Agreement with the other over the application of rules, rates of pay or conditions whose proper application is a matter of mutual or joint responsibility.

Under these conditions the Board submits there are no limitations that can be applied to discussions of the proper application of rules, rates or conditions contained in the schedule, or the rules, rates or conditions which they involve, these are subjects to be determined in joint conference or negotiations; or, failing in this, to be interpreted in the manner provided, and the Board rules that in this instant claim paragraph (e) of Article 4 and paragraphs (a) and (h) of Article 6 of the Agreement do not apply.

In view of the conditions outlined and the evidence submitted in this dispute, the Agent-Telegrapher at Hennessey, previous to May 25, 1936, had been performing the Sunday and Holiday work at the station at Hennessey, and had covered an extra assignment on each week-day for the purpose of opening the station and meeting and working Train No. 18, and thereby performing such work as is clearly evidenced as coming within the scope and other rules of the Telegraphers' Agreement. When the change was made and the station or depot was opened and the work formerly performed by the Agent-Telegrapher was assigned to an employe not covered by the existing schedule, the carrier clearly evaded the application of the established rules and violated the terms of the existing Agreement between the parties.

**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 carrier violated the terms of the existing Agreement between the parties by displacing the Agent-Telegrapher from the Sunday and week-day assignments outlined in the claim, and substituting an employe not covered by the Agreement to perform work clearly evidenced as coming within the scope of the Telegraphers' Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 2nd day of December, 1937.