

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
GULF, COLORADO AND SANTA FE RAILWAY COMPANY

**STATEMENT OF CLAIM:** "Claim of the General Committee of the Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway that the position of agent, Paris, Texas which was incorporated in the Frisco Telegraphers' Schedule prior to July 1, 1937, the jurisdiction having been transferred to the Santa Fe on that date, shall be incorporated in the Santa Fe Telegraphers' Schedule and filled in accordance with the provisions thereof."

**EMPLOYES' STATEMENT OF FACTS:** "An agreement bearing date of February 5, 1924, and August 1, 1937, respectively as to rules of working conditions and rates of pay exists between the parties to this dispute.

"Jurisdiction of facilities and positions at Paris, Texas, alternates each five (5) year period between the Frisco and Santa Fe. Effective July 1, 1937, jurisdiction was transferred from the Frisco to the Santa Fe. Agreement between the two railroads and past practice is that employees of the company relinquishing jurisdiction will vacate the positions and the positions filled by the company assuming jurisdiction.

"Prior to July 1, 1937, the agent position at Paris, Texas, was incorporated in the Frisco Telegraphers' Schedule rate 97¢ per hour, with a temporary agreed upon arrangement in effect which provided for a monthly rate of \$235.00 per month with no assigned hours. The agency position following the transfer of jurisdiction July 1, 1937, was filled by appointment by the Santa Fe without regard to provisions of the Telegraphers' Schedule in effect on its property."

**CARRIER'S STATEMENT OF FACTS:** "An Agreement, effective February 5, 1924, exists between the parties to this dispute.

"The joint station facilities at Paris, Texas, are operated in alternating five-year periods under the supervision of the Gulf, Colorado and Santa Fe Railway and the St. Louis-San Francisco & Texas Railway, respectively. The practice is for each operating company to provide an agent from the ranks of its own employees during its period of control; the incumbent of the position being changed each time supervision of operations change.

"Effective as of July 1, 1937, supervision of operations was transferred from the St. Louis-San Francisco & Texas Railway to the Gulf, Colorado and Santa Fe Railway. In accordance with the practice, the agent appointed by the former Company was removed and replaced by an appointee of the latter Company, the latter being selected without regard to the seniority provisions of the Telegraphers' Schedule."

considered a supervisory agency each time the station has been operated by the Santa Fe, and that condition was re-established on July 1.'

"The Committee has offered the carrier nothing to support its statement that:

'The Organization investigated conditions surrounding the position in question and found the incumbent performing routine office duties daily and to the extent of 9 to 12 hours.'

and has refused the carrier's invitation to participate in a joint investigation at Paris to develop the facts. The carrier accordingly can only enter a general denial of the statement quoted and say that, based on its own investigations, the agent at Paris is not performing routine office work of any character.

"However, and notwithstanding its position that the matter of work performed by this agent, or the necessity for a supervisory agent at Paris, is one for consideration in negotiations between the carrier and its Telegraphers and not for adjudication by the Board, the carrier considers it necessary to make the following brief explanation of its reasons for concluding that it must have a supervisory agent at Paris, and that it must not be handicapped by seniority rules in selecting the incumbent for that position:

"Paris is a city of approximately 16,000 population, and is an important trading center of East Texas and a large originator of cotton and other freight. The Frisco and Santa Fe are not directly competitive at that station, but they both face intense competition from highway transportation and from the Missouri Pacific System (Texas & Pacific) and Southern Pacific Lines in Texas and Louisiana; and, through a short independent line, with the St. Louis Southwestern Railway. The Frisco-Santa Fe joint terminals cover a considerable area which must be supervised by the agent, and the industrial plants are widely scattered. Competitive considerations have forced the agents of all railroads to spend a considerable amount of time with the various shippers and receivers of freight, and this contact must be maintained almost daily. These outside requirements leave the agent little time to spend in the office, and he cannot observe assigned hours and still protect those requirements; a patron desiring information or service would resent a reply to the effect that the agent, having completed his eight-hour assignment, was not available, and there is no necessity for picturing the ultimate effect on the competitive standing at Paris. The same effect would follow if the carrier should be compelled to observe seniority rules and assign the position to the senior applicant, regardless of experience, personality, qualifications or soliciting ability. It is perhaps true that such an agent could perform sufficient routine work to warrant the elimination of some clerical or telegraph service position, but he could not protect the competitive situation, and the carrier prefers to employ others to do the routine work and permit the agent to confine himself to supervisory and solicitation activities. It repeats its contention that its conclusions in this regard are in no way violative of its obligations under the Telegraphers' Schedule."

**OPINION OF BOARD:** As indicated by the statement of the parties, the respondent Santa Fe and the Frisco jointly operate the station at Paris, Texas, each company alternately operating for a period of five years. When jurisdiction changes, the retiring company's telegraph employees are relieved, returning to their own company, and the incoming company installs its employees. There is no joint agreement between the organization and the two companies, each having their separate unrelated agreement with the organization.

For a clearer understanding of the situation which gave rise to this complaint, reference should be made to the controversy covered by Award 231 of this Division, Docket TE-152. This was a case brought by the Telegraphers against the Frisco. The Santa Fe had been operating the property up to

June 30, 1932, when the Frisco took it over. During the period of Santa Fe operation a position of Ticket Agent was abolished and the work thereof turned over to the Freight Agent who occupied an excepted position. The Frisco, on assuming jurisdiction, continued that arrangement. The specific complaint there was that the first trick operator should receive a higher rate of pay on the theory that the Ticket Agent position had not actually been abolished and that the work thereof could not properly be assigned to the Freight Agent and thus taken from under the agreement. The decision of the Board sustained the claim that the work assumed by the Freight Agent could not properly be taken from under the agreement, and directed that the job of Ticket Agent be re-established and bulletined.

It appears that when the parties came to put the Award in effect they agreed that instead of re-establishing the Ticket Agent position the exemption of the Freight Agent from the agreement would be removed and his position made subject thereto.

Jurisdiction of the property again reverted to the Santa Fe on July 1, 1937, and it apparently continued to handle the work as was done by the Frisco, but also continued to regard the Freight Agent position as exempted, as provided by its schedule with the Telegraphers.

This case is brought under the theory that the agreement between the Frisco and the Telegraphers for the removal of the exemption on the Freight Agent position is binding on the Santa Fe. This ground is manifestly untenable.

There may be ground for complaint against the Santa Fe for the abolition of position covered by the schedule and assignment of its work to an exempted employe, but that is not the case covered by this claim. There is also some contention in the case on the part of the organization to the effect that the Freight Agent is performing routine office duties belonging under the schedule. That likewise was not the controversy progressed with the Management, which was solely that the agreement made with the Frisco became automatically operative with the Santa Fe on the reversion of jurisdiction.

The case must, therefore, be dismissed but without prejudice of the right of the organization to complain concerning the other matters.

**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 employes involved in this dispute are respectively carrier and employes 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

The evidence does not sustain the claim.

#### AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of December, 1938.