

Award No. 784

Docket No. TE-767

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central Railroad that, by reason of the combining of the duties and responsibilities of the position of assistant freight agent at the Fulton, Kentucky, freight yard with those of the freight agent at the Fulton freight office on July 7, 1932, thereby substantially increasing the duties and responsibilities of the position, the rate of pay for the position of freight agent shall be increased to \$290.00 per month beginning July 7, 1932, and continue to August 1, 1937, when the rate shall be additionally increased by \$12.17 per month, which is the amount of increase fixed by Mediation Agreement Case No. A-395 dated August 10, 1937, and the incumbent of the position retroactively compensated."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing date of August 16, 1931, as to rules of working conditions, and as to rates of pay is in effect between the parties to this dispute.

"The position of freight agent at Fulton, Ky., is covered by said agreement and at the rate of \$250.00 per month.

"Prior to July 17, 1932, the duties and responsibilities of the freight agent at Fulton were confined to the supervision of freight work at the Fulton freight office. The rate of pay of \$250.00 per month was fixed for the position by agreement between the carrier and committee as of April 1, 1930, on the basis of the duties and responsibilities then required of the position.

"Prior to July 7, 1932, a position of assistant freight agent existed at the Fulton freight yard at the rate of \$225.00 per month, and the position was covered by telegraphers' agreement.

"Effective July 7, 1932, the position of assistant freight agent at the freight yard was discontinued and the duties and responsibilities combined with that of the freight agent at the freight office thereby substantially increasing the duties and responsibilities of the freight agent. The rate of pay of the position of freight agent was not increased as a consequence to this change."

CARRIER'S STATEMENT OF FACTS: "The position of freight agent at Fulton, Kentucky, is within the scope of the schedule agreement negotiated between the Carrier and the Order of Railroad Telegraphers, effective August 16, 1932. (This effective date was changed to August 16, 1931, for rate of pay and November 1, 1931, for rules and regulations by Award No. 369 issued by the Third Division of the National Railroad Adjustment Board dated February 2, 1937, in its Docket No. TE-319.) The agreed upon rate of pay shown in the schedule agreement for the position of agent at Fulton is \$250.00 per month as full compensation for all services rendered. This rate was increased \$12.17 effective August 1, 1937, by agreement with the

'New Positions.

'Rule 41. When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

'When an agent-telegrapher's position covered by this schedule becomes a non-telegraph station, the rate of pay will not be reduced, except as provided in the following paragraph:

'When a small non-telegraph position becomes an agent-telegrapher position, the rate of pay will be fixed in conformity with positions of similar class in the same seniority district, provided that should such position again become a non-telegraph position, the rate of pay will revert to the original rate plus any increase that may have been granted similar positions.'

'Relief Assignments Bulletined.

'Rule 47. Regular relief assignments will be bulletined in accordance with schedule rules.

'Any change in relief assignments from that as advertised will constitute a new position but the employee holding the relief assignment will have the option of retaining it as changed or he may exercise his displacement privileges. In the latter event, the relief assignments will be re-bulletined.

'Relief assignments advertised for six days changed to provide work of less than six days will not be considered a regular assignment and will be filled by extra men. Employee previously holding the relief assignment may exercise displacement privileges.

'When relief day assignments are set up, employees holding regular positions that are changed from seven to six days, will not be permitted to exercise displacement privileges by reason of relief day being provided.'

'Expiration of Agreement.

'Rule 60. There shall be no change in these rules and rates of pay except upon thirty (30) days' notice.'

"There has been no violation of any of these rules on part of the carrier, and the carrier, therefore, respectfully asks that the claim be declined.

"All data submitted in support of the carrier's position have been presented to the representative of the employees and made a part of the question in dispute."

OPINION OF BOARD: The change which was made in November, 1929, consisting in the establishment of a large yard to take over the perishable work formerly handled at Mounds in connection with the opening of the new cut-off, constituted such a change in the position of the Agent at Fulton, in our opinion, as to amount to the establishment of a new position, the pay for which would require adjustment pursuant to Rule 41. We are further of the opinion that the parties so considered it and that the adjustment which was made, consisting of an increase in the salary from \$225 to \$250 per month effective April 1, 1930, was made in consideration thereof. Whether it was an adequate adjustment or whether—as seems now to be contended in part—the basic rate was already subnormal are matters as to which this Board has no cognizance, as they were established by agreement of the parties.

Coincident with this adjustment, the Management agreed to change the classification of an existing position to that of Assistant Agent and make it subject to the Telegraphers' Agreement. The position was already there and

had immediate supervision of the new yard operations. There is nothing about the agreement from which it could be inferred that it involved the maintenance of this position for any particular length of time. That position was abolished July 7, 1932; although it appears that as a result of such abolition the duties of the Agent were somewhat increased and he was subjected to an out-of-pocket expense in the use of his automobile traveling between stations daily, it is not considered these changes were sufficient to warrant finding that a new position was created as of that date, bringing into operation Rule 41. This Board has no authority to change agreed upon rates of pay otherwise than under the operation of Rule 41.

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 employee involved in this dispute are respectively carrier and employee 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 no violation of the Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1938.