

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

William H. Spencer, 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 C. E. Brown, Colfax, California, is entitled, under Rules 12 (d) and 16 of the Telegraphers' Agreement, to a special call each day February 2nd, 1937 to March 2nd, 1937 account required to go on duty at 6:00 A. M."

EMPLOYEES' STATEMENT OF FACTS: "February 2nd, 1937 to March 2nd, 1937, inclusive, Telegrapher C. E. Brown was employed as first telegrapher-clerk at Colfax, Sacramento Division, with a starting time assignment 6:00 A. M. In addition to Telegrapher Brown, there was employed at Colfax an agent not required to telegraph with an assigned starting time of 8:00 A. M., a second telegrapher-clerk with an assigned starting time of 2:00 P. M., and a third telegrapher-clerk with an assigned starting time of 10:00 P. M."

An agreement bearing date of September 1, 1927 (Wage Scale effective May 1, 1927) is in effect between the parties.

POSITION OF EMPLOYEES: "Exhibits 'A' to 'I' are attached to and made a part of this brief.

"Conference was held on October 28th, 1937 without any agreement in settlement of the dispute being reached.

"Rule 12 of the agreement in effect is the governing factor in this dispute and if the claim be sustained, then Rule 16 becomes operative and payment of the claim is to be made under Rule 16.

'RULE 12

Starting Time

(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected.

(b) Where three consecutive shifts are worked covering the 24-hour period no shift will have a starting time after twelve (12) o'clock midnight and before six (6) A. M.

(c) At stations where but one (1) telegrapher is employed, if a day office, the hours of service shall begin between six (6) A. M. and nine (9) A. M. At stations where two (2) telegraphers are employed the hours of service for agent or first trick telegraphers shall begin between six (6) A. M. and nine (9) A. M.

"Section (f) of Article 12 provides that where agent is required to telegraph, he will be known as first trick telegrapher. The Agent at Colfax was not required to telegraph during the period involved in this claim, therefore the Agent did not assume the status of first trick telegrapher. That status belonged to the Telegrapher working the trick starting at 6:00 A. M. or to Telegrapher Brown, the claimant.

"Having removed any question of doubt that the proper status of Telegrapher Brown was that of first trick telegrapher, the Carrier now directs particular attention to the provisions of Section (d) of Rule 12, which the Petitioner contends was violated. Section (d) specifically provides that at stations where three or more telegraphers are employed covering the twenty-four hour period, the hours of service for the Agent or first trick telegrapher will commence at 8:00 A. M. The plain and obvious language of the Rule accords the Carrier the right at stations where three or more telegraphers are employed to start either the Agent or the first trick telegrapher at 8:00 A. M. In the present case, the Agent commenced his tour of duty at 8:00 A. M. in accordance with Section (d) and the first trick telegrapher (Brown) commenced his tour of duty at 6:00 A. M. as provided in Section (b). Agent's starting time also conformed with the provisions of Section (e), Rule 12.

"Rule 16, Telegraphers' Agreement, on which Petitioner bases claim for 29 calls is as follows:

'RULE 16

Call Rule

(a) Telegraphers notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis. Each call to duty after being released will be a separate call.

(b) Telegrapher required to report for duty before assigned starting time and continues to work through his regular shift, shall be paid three (3) hours for two (2) hours' work or less, and time and one-half thereafter on the minute basis for the time required to work in advance of his regular starting time."

"Telegrapher Brown was not notified or called to perform work not continuous with the regular work period nor was he required to report for duty before regular starting time and work through his regular shift. To the contrary, he reported for duty each date involved in claim at his regular starting time, 6:00 A. M., and was released from duty at close of trick at 2:00 P. M., hence said Rule 16 is in no manner applicable to the instant case."

OPINION OF BOARD: The carrier insists that the assignment here in dispute was made within the limits of Rule 12 (b). While this may be admitted, the fact remains that Rule 12 (b), being one of the more general provisions of the rule, may be modified by the more specific provisions which follow in so far as the subsequent specific provisions cannot be harmonized with it.

Rule 12 (d), if considered without reference to other provisions, would justify the carrier in having made the assignment in question. It provides that "at stations where three (3) or more telegraphers are employed covering the twenty-four (24) hour period, the hours of service for the agent or first trick telegraphers will commence at eight (8) A. M."

Rule 12 (d), too, must be read in connection with the subsequent provisions. It is clear that paragraphs (e) and (f) were included in the rule as a basis for interpreting the word "agent" as used therein and as a basis for assigning a starting time to him. When the agent, as the term is used in

Rule 12 (d), is required to telegraph, he is known as the first trick telegrapher and by force of paragraph (d) his starting time will be eight (8) A. M. If, however, the agent, as the term is used in paragraph (d) is not required to telegraph, the carrier has the privilege of assigning to him a starting time between six (6) A. M. and nine (9) A. M. Under this interpretation, the carrier improperly required the claimant to report for work at 6:00 A. M. during the period involved in this dispute.

The claimant, having been improperly called to work at 6:00 A. M. is entitled to compensation under Rule 16 (b) of the Agreement.

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

That the claimant was required to report to work in violation of Rule 12 (d) during the period involved in this dispute, and for each such day so required to report he is entitled to be compensated under Rule 16 (b).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1939.