

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

PERE MARQUETTE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Pere Marquette Railway Company that; the position of agent-operator at Ruth, Michigan, was arbitrarily reclassified as a non-telegraph agency on February 16, 1932, and the rate reduced from 60¢ per hour to 50¢ per hour without negotiations or agreement, and later increased to 55½¢ per hour by agreement but contingent upon the position being made a non-telegraph agency in fact, and, that; after the non-telegraph agency rate, 55½¢ per hour, had been agreed upon for the position, communication service was not discontinued, and because of which the schedule rate of 60¢ per hour, plus the 5¢ per hour increase established on August 1, 1937, shall be restored and Charles W. Powell the regularly assigned incumbent of the job at the time the change was made and all others who worked this position since date of reclassification to non-telegraph agent be retroactively reimbursed the difference between the rate established for the position if made non-telegraph agent in fact and the scheduled agent-operator rate."

COMMITTEE'S STATEMENT OF FACTS: "A contract of agreement bearing date May 16, 1927, as to rules and rates of pay is in effect between the parties to this dispute. The position of Agent-operator at Ruth, Michigan, is listed in the wage scale with a rate of 60¢ per hour applying thereto.

"On February 16, 1932, the management without negotiations or agreement reclassified the scheduled agent-operator position at Ruth, Michigan, to non-telegraph agent and established a rate of 50¢ per hour in lieu of the 60¢ per hour rate listed in the wage scale of the schedule agreement.

"The Committee protested this unilateral action of the carrier as to reclassification and reduction in the rate of pay. Negotiations followed and on July 23, 1932, a rate of 55½¢ per hour was agreed upon with the understanding the agent-operator position would be made a non-telegraph agency position in fact, and that thereafter communication service would be discontinued.

"The incumbents of the non-telegraph agency at Ruth, Mich., since the change in classification and rate of pay was made effective is required to transmit and receive by telephone, messages and reports of record in practically the same manner and to the same extent as was done prior to the change in classification and rate of pay, notwithstanding the fact that non-telegraph agents when classified as such must not be required or permitted to, by either telegraph or telephone, transmit or receive messages and/or reports of record."

POSITION OF EMPLOYES: "The Telegraphers' Agreement, effective May 16, 1927, is still in effect and constitutes an agreement between the

Date	Office Items	Merchandise		Car Loads		Tickets Sold	Pieces of Express	Western Union Wires
	Waybills and Expense Bills	Less Rec'd Pounds	Carload Forw'd Pounds	Forw'd	Rec'd			
1930	4.6	3,834	6,527	.7	.4	.02	2.5	1.5
1931	3.7	1,364	7,639	1.2	.3	.02	1.3	1.2
1932	3.5	444	111	1.1	.3	.03	.9	1.
1938	3.5	444	78	.6	.3	.1	1.	0

"Furthermore, after the establishment of the station as non-telegraphic and prior to the establishment of the 55½¢ rate by negotiation and agreement on July 23, 1932 (Exhibit 2), the representatives of The Order of Railroad Telegraphers made careful investigation of this station. During said period, the agent's work was no different from his work since except in volume. At that time no objection was raised as to the use of any phone by the agent for the purpose of making calls incidental to his routine work. On October 11, 1937, for the first time, claim was made in a letter by General Chairman Burr that the position was in nature telegraphic (Carrier's Exhibit 3). Thus more than five years have elapsed since the agreement between the carrier and the committee which would appear to be conclusive evidence that their contention is without basis.

"Moreover by virtue of Article II, Paragraph b (Carrier's Exhibit 4) of the agreement of May 16, 1927, it was necessary for the employe to object within ten days of the date of the action of the carrier which he felt was an unjust treatment, and no such objection has ever been received by the carrier from the agent or his representatives, except as above stated. The carrier's contention is, therefore, that the claim be denied."

OPINION OF BOARD: Effective February 16, 1932, the carrier reclassified the position of agent-operator at Ruth, Michigan to a non-telegraph agency and reduced the hourly rate of pay from 60 cents per hour to 50 cents per hour. Subsequently following protest conferences were held out of which grew a memorandum of agreement fixing the rate of the reclassified agency at 55½ cents per hour. It is not material to this case that certain other stations were reclassified as of the same date as Ruth and were likewise included in the protest and in the memorandum of agreement disposing of the issue. The agreement, referred to as Employees' Exhibit A, bears the following caption:

"Memorandum of Agreement between the Representatives of the Railroad Telegraphers and the Pere Marquette Railway Company, in connection with the rates of pay for certain stations recently made non-telegraph agencies."

The first paragraph of the agreement states that the stations listed were recently made non-telegraph and the rate of 50 cents per hour established for each of them. The second paragraph recites that the rate of pay was protested and that as a result of conferences agreement was reached with respect thereto and the rates established as listed in the body of the agreement.

The issue here is whether Ruth is a non-telegraph agency. The record indicates that not until October 11, 1937, was any protest registered by the employes with respect to the classification of position of agent at Ruth. In a letter of that date to the Superintendent, the General Chairman states: "About two months ago I stopped at Ruth station and was surprised that the railroad telephone was still continued in that office." The telegraph instruments were removed when the station was reclassified in 1932, and the selector removed from the railroad telephone so that it was impossible for the dispatcher to call the agent. It remained possible, however, for the agent

to make some use of it. The record also shows that at the time of the reclassification in 1932 there was a commercial telephone in the office, which still remains.

The record as originally submitted to the Board was insufficient to indicate whether Ruth is a non-telegraph station conforming to the understanding between the parties. The Board, therefore, requested the parties to conduct a joint investigation for the years 1937 and 1938 and report to the Board certain information with respect to the character of the use to which the commercial phone is devoted, together with copies of report forms and messages transmitted by means of the commercial phone in those years. The parties were also asked to make such comment and supply such other information as their joint investigation suggested might be helpful to the Board.

As a consequence of the joint investigation, it develops that the Memorandum of Agreement of July 23, 1932, was based upon the mutual understanding that agents at non-telegraph stations would not be required to send or receive train orders, messages, or reports by telegraph or telephone, i. e., the usual work performed by an operator at a telegraph agency. When the reclassification was made in 1932, instructions were put out by the Superintendent, designed to accomplish the reclassification to non-telegraph agencies of the positions involved. The investigation developed that now, however, the agent at Ruth is regularly, day by day, receiving and transmitting messages and reports which, it is shown by the record in this case, is substantially the same work he performed prior to the reclassification. The understanding did not require the removal of the commercial telephone as a requisite of the reclassification, nor did it permit at a non-telegraph agency the use of the railroad or commercial telephone for the performance of the usual work of an operator at a telegraph agency.

Based on all the facts and circumstances of this particular case, not establishing a precedent with respect to retroactive payments, and in view of the conditions now existing at Ruth, and shown to exist at the time the claim in this case was made by the General Chairman's letter of October 11, 1937, it is the Opinion of the Board that the formerly existing agent-operator rate of 60¢ per hour (plus the increase effective August 1, 1937) should be restored effective with the date of the claim, October 11, 1937, and that such rate be continued (unless changed by the parties) until such time as Ruth may be reclassified as a non-telegraph agency, in accordance with the understanding which formed the basis of the agreement of July 23, 1932.

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 agent-operator rate at Ruth should be restored effective with the date of the claim, October 11, 1937, and continued in effect until and unless the position is reclassified as non-telegraph agent, in accordance with the above Opinion.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1939.