

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway, that (a) the Carrier violated the Telegraphers' Agreement when on June 1, 1937, the agreed upon rate of pay for the Odell agency (68¢ per hour) was arbitrarily reduced to 51 cents per hour, and (b) the 68 cents per hour rate be restored as of June 1, 1937."

STATEMENT OF FACTS: The Telegraphers' Schedule lists a position agent-telegrapher, Odell, Texas, rate 68 cents per hour. Effective June 1, 1937, the carrier reclassified the position of agent-telegrapher to small non-telegraph agent and reduced the rate of pay from 68 cents per hour to 51 cents per hour without agreement with the committee.

This action on the part of the carrier was protested by the committee and failing of settlement on the property was later submitted to the National Railroad Adjustment Board, (Docket TE-636) upon which Award No. 644 was rendered by this Division, the Board in its opinion holding in part as follows:

"A subordinate question is involved in this case as was the situation in both those cases, i. e., whether the reclassification made was correct, that is whether (a) the classification to small non-telegraph was proper (b) even if so whether the 51 cent rate was the correct rate to apply. It should be understood there is nothing in the agreement that establishes a rate of 51 cents as uniformly applicable to small non-telegraph positions; that is the minimum rate and applies to most all those positions but there are other rates of 56 3/4 and 65 1/4 cents applicable to such positions.

"This subordinate aspect of the case was not developed sufficiently to enable the Board to pass judgment on it and in this respect, the case should be remanded for joint check by the parties with the right to bring it back to the Board failing agreement."

Following the issuance of Award 644, joint check was made and further handling given the case by the parties on the property without being able to dispose of the case and it is this aspect of the case which has been remanded to this Division for final disposition.

An agreement bearing date of February 5, 1924, as to rules and January 1, 1928 as to rates of pay is in effect between the parties.

1938 while both these stations were in charge of non-telegraph agents rated at 51¢ per hour which rates were increased to 56¢ per hour by the general increase effective August 1, 1937 as a result of Mediation Agreement. This comparison indicates beyond a question of doubt that the rate of 51¢ per hour which was made effective June 1, 1937 for the small non-telegraph agent at Odell, Texas, was then and is now adequate compensation for the duties and responsibilities attached to this position, particularly when we consider the fact that the rate of 51¢ per hour was established by agreement with The Order of Railroad Telegraphers for the small non-telegraph agent at Maryneal, Texas.

"Carrier's Exhibits 'F', 'G' and 'H' are statements of station revenue and business handled, January to December, 1937, inclusive, at Mullen, Novice and Melvin stations located on the Southern Division which is a seniority district adjoining the one in which Odell, Texas is located. These three stations were small non-telegraph agencies on June 1, 1937, carrying a rate of 51¢ per hour which is the rate of pay that was established for Odell, Texas, effective that date. All of these stations are at present small non-telegraph agencies rated at 56¢ per hour. Mullen, Novice and Melvin stations were made small non-telegraph agencies by agreement with The Order of Railroad Telegraphers, effective May 8, 1932, September 21, 1931 and June 1, 1925, respectively.

"Carrier's Exhibits 'I' and 'J' are statements of station revenue and business handled, January, 1937 to November, 1938, inclusive, at Olive and Alberhill, California, and are submitted because the referee in his opinion in Award 644 mentioned the particular rates of pay at these stations. Obviously these stations do not compare with Odell, Texas. Furthermore, such a comparison would not be in order for the purpose of establishing a rate of pay for the agency at Odell, Texas, as the Telegraphers' Schedule specifies that such rates will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

"The foregoing proves conclusively that the agency at Odell, Texas is small non-telegraph in fact; that the rate of 51¢ per hour which was made effective June 1, 1937 for this small non-telegraph agency was fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district and that the compensation is adequate for the duties and responsibilities attached to this position."

OPINION OF BOARD: The agency position at Odell, Texas, was reclassified from that of Agent-telegrapher, rate 68 cents per hour, to a small non-telegraph agent, rate 51 cents per hour, by the Carrier without conference and agreement with the Committee. The right of the Carrier to make this change without conference and agreement was sustained in Award No. 644. However, the Board found that whether a proper reclassification had been made was insufficiently developed in the record and that aspect of the case was remanded to the parties. The parties having failed to reach agreement the Brotherhood has brought this aspect of the dispute here for decision.

The question at issue is summed up in Award 644, as follows:

"A subordinate question is involved in this case as was the situation in both those cases, i. e., whether the reclassification made was correct, that is whether (a) the classification to small non-telegraph was proper (b) even if so whether the 51 cent rate was the correct rate to apply. It should be understood there is nothing in the agreement that establishes a rate of 51 cents as uniformly applicable to small non-telegraph positions; that is the minimum rate and applies to most all those positions but there are other rates of 56-3/4 and 65-1/4 cents applicable to such positions.

"This subordinate aspect of the case was not developed sufficiently to enable the Board to pass judgment on it and in this respect the case

should be remanded for joint check by the parties with the right to bring it back to the Board failing agreement."

The rule of the agreement which governs this aspect of the dispute provides:

"ARTICLE II

Classification, New Positions, etc.

(a) Where existing pay roll classification does not conform to the scope of this schedule, employees performing service in the classes specified therein shall be classified in accordance therewith.

(b) 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."

The record developed after the case was remanded to the parties shows only two other stations—Longworth and Maryneal—on the same seniority district which are small non-telegraph stations. Longworth pays \$80.00 per month and Maryneal pays a rate of 51 cents per hour. The supplemental record also shows that the business handled at each of these stations is equal to, if not greater, than the business handled by the agent at Odell. Reference is made in the Opinion in Award No. 644 to rates of 56-3/4 and 65-1/4 cents applicable to such positions. The records show that the stations at which these rates are paid are located in California on another seniority district which is not even contiguous to the seniority district on which Odell is located.

Upon the entire record the Board finds that the proper rate was applied by Carrier when the agency position at Odell, Texas was reclassified to a small non-telegraph agent.

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 employees involved in this dispute are respectively carrier and employees 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 proper rate of pay was fixed in accordance with agreement when the agency position at Odell, Texas was reclassified from that of agent-telegrapher to small non-telegraph agent.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.