

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company that the rate of pay of 68¢ per hour for the agency position at Austin be restored for the period March 15 to August 15, 1938, and any subsequent periods during which the same reclassified rate has been placed in effect, and that all employees involved be compensated for any monetary loss sustained because of the failure of the carrier to maintain the agreed upon rate of 68¢ an hour during the periods covered by this claim."

EMPLOYEES' STATEMENT OF FACTS: "The carrier, without conference and agreement with representatives of employees, set up a rate of 55 cents per hour for the agency position at Austin, for the period March 15 to August 15, 1938, and declared their intention of making the rate effective in subsequent years."

POSITION OF EMPLOYEES: "Exhibits one to five inclusive are attached to, and made a part of this submission.

"Exhibit one is a declaration of intention upon the part of the carrier to reclassify the agent-telegrapher position at Austin to a non-telegraph agency during a certain period of the year, and reduce the rate of pay. The position has never been made a non-telegraph agency except as relates to railroad telegraphing, the Western Union business being handled by telegraph during this period of time mentioned in Exhibit One, and the employees, therefore, contend that the declared intention of the carrier as to reclassification was not consummated, but the carrier did reduce the rate of pay.

"So long as any telegraphing of any nature is performed in any office we hold that the position in that office cannot be designated as a non-telegraph position. A knowledge of telegraphy was essential in order that the occupant of the position at Austin might handle the Western Union business. The telegraph was used during this period of time for the handling of the Western Union business.

"There is a contract and agreement existing between the parties in this dispute effective as to rules January 1, 1928, and effective as to rates of pay August 1, 1937.

"On page 20 of the contract is found a designated position of Agent-telegrapher at Austin, Grand Junction division, with an hourly rate of 63 cents, which hourly rate was increased to 68 cents effective August 1, 1937.

'(E-3) The word "class" used in Paragraphs (E-1) and (E-2) above is defined as follows: Relay Department; Agent; Agent-Telegrapher; Agents-Small Non-telegraph; Telegraphers; Telephoners; Tower Director; and Towerman, either Telegrapher or Telephoner.'

as well as Rule 4 of the agreement, which is an intermittent service rule covering small non-telegraph and non-telephone agencies, together with Rule 14-(b), is ample proof that the rules and rates of pay of the current telegraphers' contract provide for the establishment of and the rate of pay for small non-telegraph agencies.

"The Carrier contends it has the right to permanently or temporarily abolish positions of agent-telegraphers at small stations and create new positions of non-telegraph agents, or reclassify agent-telegraphers to non-telegraph agents if in its judgment the work or lack of work at any point does not justify the retention of an agent-telegrapher and the telegraph instruments of the office are removed.

"The carrier further contends that in view of the fact the current contract provides for a rate of pay of 55 cents per hour for small non-telegraph agents, and that the Organization at one time agreed (See Exhibit 2) to the establishment of a non-telegraph agency at Austin, there is no justification under the rules or the past practice in connection therewith to now demand 68 cents per hour for the agent at this point during the period it is classified as a non-telegraph agency."

OPINION OF BOARD: The position of Agent-Telegrapher has existed at Austin, Colo., for a number of years. Under date of February 9, 1938, Carrier notified the General Chairman of the Order of Railroad Telegraphers of its intention to reclassify the station to a small non-telegraph agency, from March 15 to Aug. 15 each year and reduce the rate of pay for the period from 68¢ to 55¢ per hour. This action, while protested by the General Chairman, was put into effect by the Carrier March 15, 1938, and the claim is for the difference in the amount paid for the reclassified position and the rate of pay for the Agent-Telegrapher's position.

The record shows that the office was operated as a telegraph office for the handling of railroad business and Western Union Telegraph Company's business and that it was never discontinued as a telegraph office except as related to railroad telegraphing.

Carrier contends that, when the office was discontinued as a telegraph office for the handling of railroad business, it had the right under the agreement to reclassify same as a small non-telegraph agency notwithstanding the fact that the office continued to handle Western Union business. In the opinion of the Board this position is untenable. The agreement under which the station is operated as a Western Union telegraph office is between Carrier and the Western Union Co. The Order of Railroad Telegraphers is not a party to the agreement and is given no right to say when a railroad office shall or shall not be operated as a Western Union Telegraph office. Railroad employees may be required by Carrier to perform telegraphing for the Western Union as long as a railroad office is also a Western Union office and the services of a telegrapher are required as long as Western Union business is handled.

Carrier states that, at the time the telegraph instruments were being removed from the station, the agent made request that the Western Union equipment be left in the station so that he might handle Western Union business and continue to receive the Western Union commissions. This is urged as an estoppel against the claim for the additional compensation for the agent. It would be a good defense if the agreement fixing the agent's rate of pay and working conditions was between Carrier and the agent. But it is not—the agreement is between Carrier and the Order of Railroad Telegraphers and individual employees, for whose benefit the agreement is made, have no authority to change or modify any of its terms or provisions. See Award No. 732.

The Board finds that Carrier violated the current agreement between the parties to this dispute when it reclassified the position at Austin, Colorado, to a small non-telegraph agency but permitted the Western Union Telegraph Co. to continue to use the station for the handling of its telegraph business under its agreement with Carrier.

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 respectfully 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 the action of the Carrier in the instant case was in violation of the terms of the prevailing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 26th day of September, 1939.