

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka, and Santa Fe Railway that when the yard office telegraph positions, rates of pay 73¢, 71¢ and 71¢ respectively, per hour, were abolished at 'PK' office, Topeka, Kansas November 28th, and 29th, 1931, and the work transferred to Second Street Tower, Topeka, Kansas, the rates of 73¢, 71¢ and 71¢ should have followed and that employes filling the positions thereat since the date of consolidation be compensated accordingly."

EMPLOYES' STATEMENT OF FACTS: "Agreement bearing date of February 5, 1924, and August 1, 1937, as to rules of working conditions and rates of pay respectively, exists between parties to this dispute."

"The Telegraphers' Schedule lists the following positions at Topeka:

'PK' office, located at passenger station, manager-telegrapher rate of pay 72¢ per hour and telegrapher (2) 71¢ per hour.

Second Street Tower, approximately ¼ mile from the passenger station, telephoner-towerman (3) rate of pay 63¢ per hour.

all of which were active positions prior to November 28, 1931. November 28th and 29th, 1931, the three positions at 'PK' yard office were abolished the work transferred to Second Street Tower, a rate of 63¢ per hour applied. A wage agreement as of August 1, 1937, increased all rates 5¢ per hour."

CARRIER'S STATEMENT OF FACTS: "Prior to about 1905 (the exact date is unknown due to the destruction of certain records by fire) the office of the Superintendent of the Eastern Division and the Division headquarters were located at Topeka, Kansas. The telegraph office known as 'PK' Office was established prior to 1887. In all probability this office was established, as is customary and necessary, in proximity of what was then the division headquarters. About 1905 with the change in the location of the division headquarters from Topeka, Kansas to Emporia, Kansas, no attempt was made to close 'PK' Office, there being certain telegraph work which it was desirable to have handled in the proximity of the station building. In 1931, when it became apparent that there was no real necessity for longer continuing 'PK'

"The following schedule of rules and regulations is hereby agreed upon * * *."

"Article one of the new schedule provides:

"All employes herein specified shall be paid on the hourly basis, except as shown in the appended wage scale and/or as may otherwise be agreed upon."

"Article XXV of the new schedule provides:

"The rates shown in the appended wage scale are to be adjusted in accordance with any subsequent agreed upon general increases and/or decreases in rates applied to positions covered by this schedule."

"This wage schedule, with respect to the positions in issue, shows:

Topeka Second Street	..	Telegrapher-Towerman	
Tower		(3)68

"It will be noted that with respect to such of the positions as are still in the schedule and which are in issue herein, the parties have negotiated and agreed upon rates to be applied subsequent to December 1, 1938; and the rates agreed upon were rates as of September 30, 1938. Furthermore, with respect to new positions that may hereafter be created, Article II, section (b), makes the very positions the rates of which are here challenged in this proceeding standards for fixing the rates to be applied thereto. When the parties negotiated this new contract they presumably had before them the duties and responsibilities of each position on the railroad, and if they did not, neither party which lacked such information has any standing to complain. This new contract has the primary effect of removing as from December 1, 1938, the subject matter of this controversy with respect to the positions rates for which were agreed upon with full, actual or constructive knowledge of the duties performed, and in this connection the Board is referred to its Award No. 45, Docket No. TE-8."

OPINION OF BOARD: The principle as to the applicability of Article II (b) established by this Division in Awards 417 and 444 and reaffirmed in connection with the disposition, by awards contemporaneously rendered, of Dockets TE-812, TE-935, and TE-936 is equally controlling in this proceeding. In so far, therefore, as the rates of compensation of the telegrapher-towermen here involved have not been fixed in conformity with the requirements of Article II (b), there has been a violation of the Agreement of February 5, 1924.

"When new positions are created," this governing rule specifies, "compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district." In circumstances where an old position is transformed into a new one, as in this proceeding, the application of the rule may lead to an increase or a decrease in the rate of compensation fixed for the new position as compared with that paid on the old, and it does not necessarily preclude the establishment of the same rate of compensation for the new position as prevailed on the old. The rates on existing positions of similar work and responsibility in the same seniority district constitute the controlling factor. In other words, the actual rates of compensation on the new positions will depend entirely upon a fair and reasonable application of the standards prescribed in the rule to the facts of each particular case.

It is the function of the carrier, in the first instance, to establish the rate in conformity with these standards; upon protest of the employes, the process of negotiation must be pursued. And if, with continued disagreement after negotiation, it may be assumed to be an appropriate function

of this Board, upon finding a violation of the governing rule, to approve or prescribe the rate deemed to conform to that rule, such action can only be taken upon a record adequate not only to disclose the fact of violation but to determine the proper rate in the circumstances. The present record is clearly inadequate for this purpose. The claimants, moreover, not only request that the Board establish a rate upon this inadequate record, but they insist that the rate previously paid to the telegraphers at the "PK" Office must necessarily be paid to the telegrapher-towermen at Second Street Tower. To sustain the claim on such a basis would be to disregard the standards of comparison expressly established by Article II (b) upon which the claimants rely. Accordingly, this proceeding will be remanded to the parties for the determination of the proper rate of compensation for each of the positions involved, in conformity with the standards prescribed in Article II (b) of the Agreement.

The remaining question concerns the duration of the period for which the rates of compensation to be so fixed by the parties shall be operative, from the standpoint of both their future applicability and their retroactive effect.

This claim was submitted under the Agreement effective February 5, 1924. Effective December 1, 1938 a new Agreement was entered into by the parties, and this Agreement specifies the rates applicable to the positions here involved. While these rates, which are the same as those that prevailed prior to the negotiation of the new Agreement (the rates being those in effect September 30, 1938), are not necessarily the proper rates under the earlier Agreement, during the period when the new positions were created, they do constitute the rates of compensation to be applied subsequent to December 1, 1938. There were no reservations whatever in the Agreement of that date relative to the positions here in issue, and the rates specified therein for these positions must be accepted as the rates agreed upon by the parties. It is not the function of this Board to alter the terms of the prevailing Agreement. Since, moreover, the positions here involved were not created subsequent to that Agreement, there are no new positions, established after December 1, 1938, to which Article II (b) can apply. The rates to be fixed by the parties in this proceeding as remanded, therefore, will not only be fixed, under these circumstances, for the sole purpose of computing retroactive compensation, if any, but this retroactive compensation will not, under the same circumstances, extend forward beyond December 1, 1938.

As far as the beginning of the period of reparations is concerned, Article V (i) of the Agreement of February 5, 1924 governs. Despite extreme contentions of both parties found in the record, it is established by previous awards of this Division involving the same carrier that while Article V (i) does not bar suit in the case of continuing violations, it limits recovery to a period beginning thirty days prior to the filing of the complaint. Furthermore, the parties have on various occasions voluntarily applied this rule as thus interpreted, and they openly agreed upon this interpretation of the rule at the hearing before the Referee in this proceeding. In so far, then, as the rates to be agreed upon by the parties involve retroactive compensation, the period of such compensation will begin, in each case, thirty days prior to the date of the filing of the complaint, as disclosed in the record, and will extend to December 1, 1938.

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 Article II (b) was applicable to the positions here involved to December 1, 1938, and that the employes are entitled to such retroactive compensation as the rates to be fixed by agreement of the parties may warrant under the rulings set forth in Opinion of Board.

AWARD

The proceeding is remanded to the parties for the determination of rates and the adjustment of retroactive compensation in conformity with the rulings of the Board set forth in the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.