Award No. 1077
Docket No. TE-936

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway Company that the rates for positions of telegrapher-cashier at each Bellville, Texas, Center, Texas and San Augustine, Texas, shall be mutually fixed retroactively to the date the cashier duties were assigned to the telegrapher-clerk to conform with similar existing positions on the same seniority district or territory and that any employe filling those positions since that time be so compensated."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing date of February 5, 1924, as to rules, and August 1, 1937, as to rates of pay is in effect between the parties. The Telegraphers' Schedule lists positions as follows:

Location	Classification	Rate
Bellville, Texas	Telegrapher-clerk	64¢ per hour
Center, Texas	Telegrapher	64¢ per hour
San Augustine, Texas	Telegrapher (2)	65¢ per hour

The above rates increased 5¢ per hour effective August 1, 1937. Bellville, Center and San Augustine are located on what is known as the Gulf Division as the result of the Beaumont and Galveston Divisions being consolidated.

"Effective January 31, 1931, or shortly thereafter, cashier duties at Bellville were transferred to the telegrapher-clerk position, the classification changed to telegrapher-cashier with no change in rate of pay.

"Effective June 18, 1932, cashier duties at Center were transferred to the telegraph position, the classification changed to telegrapher-cashier with no change in the rate of pay.

"Effective June 11, 1931, cashier position at San Augustine was abolished, the duties transferred to telegrapher-clerk position, classification changed to telegrapher-cashier with no change in the rate of pay."

CARRIER'S STATEMENT OF FACTS: "At three stations on the Gulf Division, because of reduction in business, resulting in less work and responsibility, cashier's duties were added to the duties required of employes subject to the Telegraphers' Schedule. As of the dates the complaints were filed, the Telegraphers' Schedule in effect was effective February 5, 1924, as to rules, with rates revised as of April 1, 1925.

"The positions involved and the rates paid are as follows:

particular employes, and one well understood and long applied in unprotested practice on this railroad. The long lack of protest in the particular instances before the Board is overwhelming proof of our assertion as to practice, and demonstrates, if any further demonstration were needed, that the practice is in strict accord with the Schedule. The Railroad Labor Board decision hereinabove referred to is proof of the ancient roots of this understanding and practice. The Schedule itself bears it out. In truth, all circumstances in this case require complete denial of the claim."

OPINION OF BOARD: In Awards 417 and 444 of this Division, involving the same carrier, the same organization, the same agrement, the same rules, and the same issue on the merits as are presented in this proceeding, the Board held that the abolition of a cashier's position and the transfer of its duties to a position formerly classified as telegrapher-clerk rendered the position of telegrapher-cashier which resulted therefrom a new position within the meaning of Article II (b) of the Agreement. No adequate grounds appear for disturbing this determination of the Board, and it must be held to be controlling in the instant proceeding.

"When new positions are cretated," 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; nor does the claimant request such action. 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.

Where, of course, any position involved was abolished, or so reclassified as to remove the new duties, prior to December 1, 1938, retroactive compensation will not extend beyond the date of such abolition or reclassification.

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 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.