

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway, that the carrier has violated, and continues to violate, the current Telegraphers' Agreement by declaring the second telegrapher's position at Hurley, New Mexico, abolished three 8 hour days in each 14 day period, beginning October 27, 1938; that S. F. Minor, the telegrapher regularly assigned to the said position, be reimbursed on the basis of 8 hours at the scheduled rate of pay of said position for each week day on which he has not been permitted to work this position since he was assigned thereto by bulletin."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective date of February 5, 1924 as to rules and August 1, 1937 as to rates of pay exists between the parties to this dispute. A new agreement effective December 1, 1938, is on file with the National Railroad Adjustment Board, Third Division.

"The Federal Wage and Hour Law became effective October 24, 1938.

"At Hurley, New Mexico a second telegrapher-clerk position, assigned hours 12:00 noon to 8:00 P. M. rate of pay 75¢ per hour, was advertised (Bulletin No. 53) October 18, 1938 and assigned to S. F. Minor.

"The records reflect that the position was

Established	October	18, 1938	Declared Abolished	October	28, 1938
"	November	3, 1938	"	"	November 12, 1938
"	November	15, 1938	"	"	November 26, 1938
"	November	29, 1938	"	"	December 10, 1938
"	December	13, 1938	"	"	December 24, 1938
"	December	27, 1938	"	"	January 7, 1939
"	January	10, 1939	"	"	January 21, 1939
"	January	24, 1939	"	"	February 4, 1939
"	February	7, 1939	"	"	February 18, 1939
"	February	21, 1939	"	"	March 4, 1939
"	March	7, 1939	"	"	March 18, 1939
"	March	21, 1939	"	"	April 1, 1939
"	April	4, 1939	"	"	April 15, 1939
"	April	18, 1939	"	"	April 29, 1939
"	May	2, 1939	"	"	May 12, 1939
"	May	16, 1939	"	"	May 26, 1939
"	May	30, 1939	"	"	June 9, 1939
"	June	13, 1939	"	"	June 23, 1939
"	June	27, 1939	"	"	July 7, 1939

Operator S. F. Minor's wire answer of December 22nd reads:

'O-502. Yes.'

"Attention is directed to that portion of the last paragraph of Division Chairman J. F. Anderson's letter of January 5, 1939 to Superintendent J. R. Skillen which reads: '... and that employes so assigned who may have heretofore lost time **except at his own request** be reimbursed for such loss.' (Emphasis supplied.) Also to the first sentence of the second paragraph of General Chairman J. L. Elliott's letter of May 25, 1939 to Mr. T. A. Gregg, Assistant to Vice-President, which reads: 'The meaning of Local Chairman Anderson's wording "at his own request" is obvious.' Both of these letters are a part of the Carrier's Exhibit 'A.' Operator S. F. Minor laid off of his own volition on each of the four occasions explained above and inasmuch as the employes, in accordance with the excerpts from Messrs. Elliott's and Anderson's letters just quoted, are not making claim in these instances, the claim is narrowed to that extent. This would make the employes claim begin January 7, 1939 instead of October 27, 1938.

"Paragraph (b) of Article XVII specifically provides that paragraph (a) of Article XVII which is the guarantee rule shall not apply in cases of reduction of forces. In each instance, except the four cases that Operator S. F. Minor laid off of his own volition, the position of second telegrapher-clerk at Hurley, New Mexico, was abolished in a bona fide force reduction. The employes have not cited a rule and there is no rule in the Telegraphers' Schedule that would prevent the Carrier from reducing its forces through the abolishment of a position covered by that schedule when such position was not needed and there were no duties to be performed thereon as in this case.

"The man who had been assigned to the position of second telegrapher-clerk at Hurley when that position was abolished was privileged to displace the junior regularly assigned employe of his class on the seniority district, if he had sufficient seniority, or take his place on the extra list.

"The Carrier asserts there is nothing in the Telegraphers' Schedule that specifies any number of days or period of time that a position must be abolished in order to constitute a bona fide reduction of forces and contends that it was entirely within its rights in abolishing the position of second telegrapher-clerk at Hurley, New Mexico, each time the Nevada Consolidated Copper Corporation ceased operations and in reestablishing this position when they resumed operations.

"This is clearly a case of force reduction, as contemplated by Paragraph (b), Article XVII, of the Telegraphers' Schedule, and the guarantee provided for by Paragraph (a), Article XVII, is not applicable in cases of force reduction. Therefore, the only rule (Paragraph (a) of Article XVII) which the employes have cited in support of their claim is made ineffective in this case by Paragraph (b) of Article XVII which definitely and specifically states that 'This rule' (Paragraph (a) of Article XVII) 'shall not apply in cases of reduction of forces. . . .' This leaves the employes without a schedule rule to support their claim which would call for a complete denial of their claim."

OPINION OF BOARD: Under the facts and circumstances of this case the Board concludes that the action complained of subsequent to November 8, 1938, i. e., the abolishing of position for three day periods every two weeks, did not constitute a reduction of force within the meaning of Article 17 (b). However, claim was first filed with the carrier December 27, 1938, and under the provisions of Article 5 (i) as interpreted by the parties, reparation is limited to 30 days prior to filing of claim.

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 action complained of subsequent to November 8, 1938, i. e., the abolishing of position for three day periods every two weeks, did not constitute a force reduction under Article 17 (b) and claim for reparation is limited under Article 5 (i) to thirty days prior to December 27, 1938. S. F. Minor shall be so compensated exclusive of Sundays and holidays and days on which he laid off of his own accord less amounts earned in other employment.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of October, 1940.