

Award No. 1248
Docket No. TE-1223

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, ROCK ISLAND AND PACIFIC
THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway that C. R. Frye should have been called on duty to perform service at Sayre, Oklahoma 6:45 A. M., June 21, 1939, instead of the telegrapher who was used and that Frye shall be paid a call under Article 4, paragraph 'C' of the Telegraphers' Agreement, by reason of the failure to use him in preference."

EMPLOYES' STATEMENT OF FACTS: "It is the Contention of the General Committee that there is in existence an agreement between the Chicago, Rock Island and Pacific Railway Company and the Order of Railroad Telegraphers, bearing date of January 1, 1928, covering wages and working conditions of the classes of employees in the station, tower and telegraph service enumerated in the scope rule thereof, copies of which have been furnished to the Board.

"Further, the committee contends that, there are three positions at Sayre, Oklahoma, now incorporated in the wage scale of the agreement and subject to the provisions of the contract, and these positions are classified as; one exclusive agent position (not required to telegraph) the hours of which are regulated by Article 4-(g), which reads:

'At stations where exclusive agents (agents not required to telegraph) are employed, same will constitute one shift, irrespective of other positions at same station which are required to telegraph.'

and two telegraph positions, the hours of which are controlled by Article 4-(a), which reads:

'Except as specified in section (1) of this Article eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two (2) or more shifts are worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day's work.'

and that the daily assigned hours of what is termed the first trick run from 10:45 A. M., to 6:45 P. M., and hours of the second telegraph shift reach from 8:15 P. M., to 4:15 A. M., there being no assigned telegraphing hours from 4:15 A. M., to 10:45 A. M., and from 6:45 P. M., to 8:15 P. M.

'If you have definite record of any understanding or agreement along the line indicated in your letter October 30, 1939, I shall be glad to receive the benefit of same.'

"NOTE: Oct. 30, 1939 reference should have been Oct. 27, 1939.

"The second to last paragraph of Mr. Dunnam's letter of November 27, 1939, read as follows:

'At the moment we have no specific case of the sort, but it is our recollection, from observation, that the practice has been to use the man nearest the time of the emergency work regardless of whether his time begins or ends, because it has been felt that this is the most equitable way to dispose of such conditions, and this regardless of the seniority of the two men involved.'

"Thus it can be seen that the alleged interpretation does not exist and the practice on which Mr. Dunnam relies is so vague and indefinite that he cannot cite anything to show its existence.

"The claim of the employes is not supported by any rule in the telegraphers' agreement of January 1, 1928, and there is no agreement or understanding in effect to support the claim. In order to sustain such a claim the Board would, in fact, have to make a new rule which it does not have the authority to do.

"Operator Caldwell was paid a call per Article 4 (c) of the agreement, hence there was no violation of this Article.

"Claim of the employes should be denied."

OPINION OF BOARD: At Sayre, Oklahoma there are three positions incorporated in and subject to provisions of the Telegraphers' Agreement, classified as: One exclusive agent position (not required to telegraph) the hours of which are regulated by Article 4-(g) and two telegraph positions, the hours of which are controlled by Article 4-(a) of the agreement.

The hours of the first trick are 10:45 A. M. to 6:45 P. M., and of the second trick 8:15 P. M. to 4:15 A. M., there being no assigned telegraphing hours from 4:15 A. M. to 10:45 A. M.

June 21, 1939 an emergency arose on account of washed out track which necessitated telegraph service beginning at 6:45 A. M. and the telegrapher who was assigned to the first, or day shift, with hours from 10:45 A. M. to 6:45 P. M. was called to perform the work and was paid a call in conformity with the provisions of the agreement covering such work to the exclusion of the claimant who the committee contends should have been called because the extra or emergency work occurred nearer the end of his shift, 4:15 A. M. than the commencing time, 10:45 A. M. of the first shift, which it is further contended is in line with a former understanding. Carrier contends that the claim is not supported by any rule in the agreement, and there is no agreement or understanding in effect to support the claim.

The Board is of the opinion that the Carrier's contention must be sustained. We are cited no rule of the controlling agreement that has been violated, nor does the record sustain any understanding in effect that would support the claim. This "Board must construe and apply agreements as the parties make them, and it has no authority to change them even to avoid inequitable results from their application." Award No. 794.

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 the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1940.