

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC
THE CHICAGO, ROCK ISLAND & GULF RAILWAY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway, that the one hour overtime, allowed the agent-telegrapher at Linwood, Iowa, each working day, by the Management in lieu of increasing the scheduled hourly rate of amount equivalent to the increase accruing to the position from the one hour overtime which was agreed upon and put into effect to provide compensation commensurate with the work performed, be restored as of March 15, 1932, the date said special allowance was discontinued; that the employe affected be reimbursed retroactively the monetary loss sustained thereby, and that said special allowance shall be continued until change by negotiation and agreement."

EMPLOYES' STATEMENT OF FACTS: "It is the contention of the general committee of the Order of Railroad Telegraphers, who have an agreement with the Chicago, Rock Island and Pacific Railway Company dated January 1, 1928, copies of which have been furnished to the Board, that Buffalo, Iowa shown on page 28, in the wage scale, under heading 'Missouri Division,' one agent position at rate of 65¢ per hour, which is a joint position for the C. R. I. & P. and C. M. St. P. & P. Railways, is a part of the agreement, and on or about January 1, 1928 Buffalo station agent-telegraph position was discontinued at this point and moved approximately one mile to a new location designated as Linwood, Iowa, and remaining a joint C. R. I. & P. and C. M. St. P. & P. position, in order that the carrier could better handle the increased business of the Portland Cement Mills located in that vicinity.

"Prior to the discontinuance of the Buffalo agent-telegraph position and the creation of the same position at Linwood all of the business given the Rock Island at Linwood was taken care of by the Davenport, Iowa agency which is located in that switching district. After the agent-telegraph position was transferred from Buffalo to Linwood the Davenport agency ceased to handle all of the business it was taking care of and the work and responsibilities transferred to the agent-telegraph position at Linwood without any adjustment in the rate of pay.

"The division officials feeling that an adjustment was warranted, in order to avoid recommending such a change at the time agreed to allow the position one hours overtime each working day, which overtime was based upon time and one-half of 65¢ per hour.

on a branch line between Rock Island and Peoria, Illinois, was particularly mentioned, the negotiated rate for that station being at present 88¢ per hour, established, of course, on basis of the business being handled at the time the rate was established. The business at that station consisted principally of merchandise and L. C. L. at the time the rate was fixed, but that business has long since disappeared in large part. The business at Linwood is practically all carload business and, therefore, requires very little attention. However, a clerical position is also maintained at Linwood to assist the agent and when business requires an additional clerk is added, and the present rate of pay of the agent, 70¢ per hour, is adequate compensation for the work performed by the agent at that point. As a matter of fact, this agent and all other agents were given a substantial increase, namely, 5¢ per hour, effective August 1, 1937, and such increases were added to the previous rates of pay. If there had been any inequality in rate at Linwood as compared with other stations it would have been proper to have made the subject a matter of negotiation at that time. The rate of pay at Galva, Illinois, is not justified by the present business, but the rate cannot be reduced without agreement, through negotiations, with the organization, and there is no rule in the telegraphers' agreement that requires the management to increase a rate without agreement through negotiation. Therefore, the Board has no rule on which it can grant a request for increased rate of pay or the arbitrary payment of an hour's overtime when overtime is not required by the management.

"Attention is called to your Award 524, Docket 543, wherein the employes presented a claim in behalf of an individual employe who was accommodated, on his individual request, by the management. In the employes' submission to the Board the following appears:

'To argue that individual contracts or agreements of this nature may be entered into at pleasure, either on the suggestion of railway officials or the employes in contravention of a general written agreement, is to attempt to prove that collective bargaining agreements are mere scraps of paper to be handled as an individual official and an individual employe may see fit.'

In the Opinion of the Referee he took cognizance of the argument of the employes and stated—

'... the Board submits that no such action can be taken except it be through following the same orderly process of conference and negotiation as had preceded the ratification by the parties of the original agreement.'

"There is no agreement with the organization that an arbitrary one hour's overtime will be paid to the agent at Linwood; therefore, even if the claim were properly before your Board there would be no basis on which the Board could sustain the claim, and it should be denied."

OPINION OF BOARD: The position of agent-telegrapher at Buffalo, Iowa, being a joint agency for the C. R. I. & P. and C. M. St. P. & P. Railways is covered by the prevailing Rock Island Telegraphers' Agreement, and listed therein at an hourly rate of 65¢. On or about January 1, 1928, this position was discontinued at that point and moved approximately one mile to a new location designated as Linwood, Iowa, where it was continued as a joint C. R. I. & P. and C. M. St. P. & P. agency, in order that the carrier could better handle the increased business of the Portland Cement Mills located in that vicinity.

It is the contention of the committee that when the position of agent-telegrapher was transferred from Buffalo, Iowa to Linwood, and the duties and responsibilities tremendously increased by transferring to this agency work that formerly had been done at Davenport, proper adjustment should have been made in the rate of pay; that the Division officers of the Carrier feeling that an adjustment was warranted, in order to avoid recommending

such adjustment at that time agreed to allow the position one hour's overtime each working day, which overtime was based upon time and one-half of 65¢ per hour. This allowance was on March 15, 1932 discontinued through unilateral action on the part of the Carrier and claim here presented is for restoration of the one hour overtime to this position, retroactive to March 15, 1932, and that said allowance shall be continued until changed by negotiation and agreement.

For the Carrier it is contended that the record shows:

"that the actual issue between Petitioner and Respondent, as discussed in conference and recorded by correspondence, is whether or not justification exists for increasing the basic hourly rate of pay of the agent-telegrapher position here involved, and there is no issue properly before this Board involving the awarding of overtime compensation for overtime service actually performed."

As the Board is of the opinion that the better disposition of this dispute is to remand this claim to the parties, we think it is not necessary to decide what is actually before us for our consideration.

When the newly created position at Linwood was created, Article 2 (a) of the agreement was not complied with. That Article reads as follows:

"(a) New Positions—Compensation. When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

Instead, the Carrier fixed the compensation at 65¢ per hour plus one hour overtime. This was to be paid whether the claimant did or did not work the hour overtime, or worked more than the hour overtime. Considerable business formerly handled through the Davenport Agency was transferred and thereafter handled by the agency at Linwood. The Carrier continued to allow the agency one hour's overtime daily until March 15, 1932, when it was discontinued, and the pay as fixed at 65¢ was continued, although considerable additional work and responsibility existed at Linwood that did not exist at Buffalo.

The Board is of the opinion that the end of justice will best be obtained by remanding this claim to the parties without prejudice so that Article 2 (a) may be complied with.

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 remanded without prejudice to the parties.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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