

Award No. 1268

Docket No. TE-1085

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway, that the practice of the Carrier in permitting and/or requiring section foremen at closed offices where an operator is not employed, such as New Salem, Moorehead and Hilltop, to secure line-ups or positions of trains regularly from the dispatcher is in violation of the Telegraphers' Agreement and shall be discontinued."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective dates 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. Rates of pay as shown are as if general increases and or decreases were progressively applied. These positions have since been abolished.

New Salem	Agent-telegrapher	65¢
Moorehead	Agent-telephoner	64¢
Hilltop	Agent-S. N. T.	56¢

"The Carrier permits and/or requires section foremen at New Salem and Moorehead to secure line-ups or positions of trains regularly from the dispatcher, over the dispatching telephone. At Hilltop the same requirement was in effect up to and including October 20, 1938."

POSITION OF EMPLOYES: "On August 6, 1937 there was filed with the Third Division of the National Railroad Adjustment Board, a joint submission, designated as Docket TE-573, the Statement of Claim and Employees' Position reading:

'STATEMENT OF CLAIM:

'Claim of the General Committee of The Order of Railroad Telegraphers, on the Atchison, Topeka and Santa Fe Railway that, in permitting and/or requiring section and/or extra gang foremen on the Missouri Division to regularly use the telephone in securing line-ups and/or positions of trains from the train dispatcher, the Carrier has violated Article II, paragraph (a), of the Telegraphers' Schedule.

'POSITION OF EMPLOYES:

'The Scope of the current Telegraphers' Schedule reads:

'The conclusion is warranted that the object and effect of the arrangement is the evasion of the overtime and call rules of the agreement.'

for the reason that the 'Call Rule' as embodied in paragraph (c) of Article III of the respective Telegraphers' Schedules effective February 5, 1924 and December 1, 1938 provides only for the payment which shall be made when and if employes covered by those agreements are called for service and does not even by intimation require the Carrier to call them and is in no way a guarantee that work will be offered. However, Award 604 did not hold, as the Telegraphers' Organization would like to have it so construed, that the four (4) closed stations in Award 604 should be reopened as offices of communication, telegraph and/or telephone instruments installed in the depot, and a telegrapher assigned.

"If, by the use of the words 'such as' in the Organization's claim as filed with the Board, the Organization is indicating that other stations than New Salem, Morehead and Hill Top are involved in this claim, the Carrier protests the inclusion of any station not only not specifically named but which has not been handled with the Carrier in conference under the applicable article of the Telegraphers' Schedule governing the handling of disputes. The Carrier insists that the claim must be restricted to the three (3) stations specifically named, viz., New Salem, Morehead and Hill Top, and no others, the records disclosing that they are the only ones discussed with the Carrier in conference. Award 906, Docket SG-803, is in point.

"The facts of record call for a denial of the claim."

OPINION OF BOARD: The claim, the facts, and the rules, as well as the views of the parties in relation thereto, amply appear above. Considering the situation thus developed, we think that while in form the carrier had abolished telegraphic and telephonic service at each of the stations involved, and predicated thereon dispensed with services of the class of employes entitled to that work as specified in the Agreement, still, to all intents and purposes, and to a degree not to be regarded as "occasional," the carrier continued the identical service through section foremen. Fairly interpreted, as we perceive, the rules precluded such action, as this Division has generally held. Of awards in which the controlling principles are discussed, see Nos. 603, 604, 919, 941, 1024, 1084.

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 the carrier violated the Agreement.

AWARD

Claim sustained as to the stations named.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.