

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Pennsylvania Railroad, that the proper rate for Relief Schedule No. 6, covering 'GM' and 'N' Offices on the Delmarva Division, should be 75¢ per hour from the time of its establishment in 1936, to August 1, 1937, and 80¢ per hour subsequently, rather than the rates of 64¢ and 67¢ an hour respectively which rates have been paid, and that employees who have worked these positions on Relief Schedule No. 6 since its establishment be compensated accordingly."

EMPLOYEES' STATEMENT OF FACTS: "Prior to July 1, 1936, Morse Telegraph was used in the handling of communication service in 'GM' Office, Cape Charles, Va., Division Relay Office for the Delmarva Division; 'NC' Office, Norfolk, Va., and 'N' Office, Norfolk Yard, (Little Creek), Va.; supplemented by teletype printer and telephone.

"The rates of pay for the Telegrapher positions were:

'GM' Cape Charles, Va.	\$.8325 per hour
'N' Norfolk Yard, Va.	.7875 " "
'NC' Norfolk, Va.	.7875 " "

"At the same time, positions of Relief Operator were in existence on the Former Norfolk Division territory at the established rate of 75¢ per hour, and on the former Delaware Division territory at the established rates of 66¢ and 73½¢ per hour.

"Relief for the positions at 'GM' Cape Charles, was not included in any Relief assignment, but was provided for by extra men paid at the rate of the position filled. Relief for the position in 'N' and 'NC' Offices was covered by a specified relief schedule which schedule was paid at the rate of the positions filled.

"Under date of June 16, 1936, Bulletin No. 129 was issued abolishing the position of Telegrapher in these offices and in lieu thereof, established positions of Printer-Operator, effective July 1, 1936, at the rate of 64¢ per hour for 'GM' and 'N,' and 67¢ per hour for 'N' Office. Included in the Bulletin was position of (Relief) Printer-Operator 'GM' Office at 64¢ per hour, and Printer-Operator (Relief) 'N' Office at 67¢ per hour.

"Under date of May 22, 1937, Bulletin No. 155 was issued abolishing all Relief Schedules effective close of business May 31, 1937, and advertised six (6) Relief Schedules, Schedule No. 6 of which covered 3 days at 'GM,' 2 days at 'N' and 1 day at 'NC' offices with notation that the rate for same was rate of position worked.

"V. Conclusion.

"It is evident, therefore, that since the Relief Printer Operators in question are not Relief Operator-Clerks within the meaning of the applicable Agreements, they are not entitled to be paid at the rate established in the Agreement for Relief Operator-Clerks, but only at the rate established for Relief Printer Operators by the Carrier, i. e., the rate of the position filled.

"It is respectfully submitted that the Carrier's action in paying the rate of the position relieved to the employees relieving the Printer Operator positions at 'GM' and 'N' offices did not constitute a violation of the applicable Agreements, and consequently, the unnamed Claimants are not entitled to be compensated at the rate of 75¢ per hour from July 1, 1936, to August 1, 1937, and 80¢ per hour subsequently.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: The question is as to the proper rate of pay for relief "printer operators" or "operator clerks" (an issue to be discussed later is as to which they should be called for purposes of payment) on that portion of the former Norfolk Division which is now a part of the Delmarva Division.

It will be helpful to state the controlling facts in form of a chronology. The claims are rooted historically in a change, made in 1936 or before, from Morse operation to that of printer operation. Briefly here is what happened in consequence.

March 11, 1936: Protest on behalf of employees against changing "rate of pay" for positions in "GM" and "NC" telegraph offices when the proposed change over is made. That protest went only to a proposed rate of 64¢ an hour for "printer operator positions." It did not explicitly reach the relief positions.

June 4, 1936: General Manager Higginbottom, replying to the protest, offered to establish a differential of 3¢, or 67¢ per hour for the two printer operator clerk positions, effective from the date they are placed in service.

June 16, 1936: Supervising Agent Thompson, by Bulletin No. 129, reciting that the printing circuits have been completed and placed in service, sought to establish for the territory in question several positions for printer operators. That bulletin included no operator clerks. It did include, for the Cape Charles "GM" and the Norfolk "N" stations, relief positions giving rate of position worked and indicating the tours of duty as "various."

Sept. 30, 1936: New rate schedules were agreed upon and promulgated for the territory now involved. They included operator clerks, block operators, and printer operators. The relief positions now in question in that Schedule dealt with the relief work which is the subject of this case as follows: LOCATION and OFFICE CALL were set down as "various." The TRICK was designated as "relief," the POSITION as "operator clerk," rather than "printer operator," and the HOURLY RATE was fixed at "75¢."

May 3, 1937: For the employees there was docketed, at conference with Supt. Vought, a claim that the "Regular relief operators working at 'GM' Cape Charles and 'N' office Norfolk Yard" should be paid at rate of 75¢ per hour rather than that at the position worked. That claim was denied on the ground that "There is no established rate for Relief Printer Operators, and, therefore, Relief men filling such positions are paid at the authorized rate of the position." That appears from the letter written by Supt. Vought to Acting Chairman Elliott under date of May 5, 1937.

May 22, 1937: By bulletin No. 155, all regular relief schedules were abolished effective May 31, 1937. In lieu thereof, "new permanent relief schedules" were published, with invitations for application therefor. That included the positions now involved.

Dec. 10, 1938: Supervising Agent Thompson, in a letter to Operator Clerk Milligan, Cape Charles, confirmed the position taken by Supt. Vought, saying that "There is no established rate for Relief Printer Operators and, therefore, relief men filling such positions are paid at the authorized rate of the position."

May 29, 1939: Supt. Schwab, in his turn, writing to Local Chairman Haley took the same position for the carrier. He elaborated to the extent of saying "that when a Morse Telegrapher position is abolished and a position of Printer-Operator is established in lieu thereof, for which latter position there is an established rate of pay, there has been no violation of Regulation 8-A-1." He went on to explain that "The Relief Schedule rate shown in the rate table does not apply to the Relief Printer-Operator work performed in 'GM' and 'N' offices, since there is an established base rate for employes as Printer-Operators and there has been no violation of Regulations 4-A-1 and/or Regulation 8-A-1."

Regulation 4-A-1 assures the employes the "rates as shown in the rate schedule." 8-A-1 reads as follows:

"The entering of employes in the positions occupied in the service, or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein provided unless or until the duties or responsibilities are substantially changed, when a reclassification of the rates and or the conditions may be made based upon like positions on the same Region as agreed to between the local committee representing the employes and the proper officer."

As to the interpretation of the Regulations in application to the schedule, the employes' position is sustained.

From Bulletin No. 129, under date of June 16, 1936, referred to in the chronology, it appears that "Applicants for positions of Printer Operator at Norfolk 'N' must be qualified to handle telegraph work, rate, route and bill freight; maintain interchange records and passing records of cars handled; handle train crews; diversion of cars; checking and approving switching statements, wharfage handling bills, etc."

The relief men, whatever they be called, printer operator or operator clerks, assuredly will be required to have all of the qualifications of the men whose work they took over.

For this case, it is not determinative that the regular occupants of the positions are classified and paid as printer operators. That is because, for the relief positions now in question, the incumbents are designated, by the rate schedule, as "relief operator clerks." And, for them, there is an assured, hourly rate of 75¢, since increased to 80¢.

That assurance is explicit. It relates to and runs with the position, thereby entitling the occupant to the stated rate for the position of "relief-operator clerk." It may be that that is not what the carrier intended. But it is what the carrier promised. This may be a typical case, illustrating that actual meeting of the minds is not always the thing which completes and makes operative the contract making process. It is rather the manifestation of mutual assent to a given proposition or a group of them. Here the carrier, by the rate schedule of September 30, 1936, manifested unequivocally its assent to pay these relief men as operator clerks the hourly rate of 75¢, by later agreement increased to 80¢. That is decisive of the controversy on its merits. That rate could not be arbitrarily reduced by the carrier. There has been no consent to its reduction by the employes.

The remaining question is as of what beginning date the award should give the employees the higher rate, that fixed by the schedule which they properly claim. There is invoked by the carrier Regulation (4-N-1) which is a cut off or limitation rule for claims for compensation. (Whether it is so in the absolute sense and as matter of law for purposes of suits to recover money need not be determined.) It requires that the claim must be presented in writing within 30 days of its occurrence which normally will be that on which the employee receives or is tendered his pay check.

In the formal sense, the claims now under consideration may not have been presented in writing until a later date, which the carrier fixes as March 17, 1939. But, as appears from our chronology, the claim in substance, and for all of the claimants, was "docketed" and discussed at a meeting between Local Chairman Elliott and General Superintendent Vought on May 3, 1937.

Since that date, it has been kept very much alive by the employees, on the property, without any claim by the carrier that it was barred by the cut off rule. Therefore, the carrier cannot now properly raise the question of cut off as to any claims for the increase in pay arising since April 3, 1937, the claim having been formally docketed on behalf of employees on May 3 of that year. The award will therefore allow the claims, based on the schedule rate from and after April 3, 1937.

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 employees involved in this dispute are respectively carrier and employees 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 there has been a violation of the rule as claimed.

AWARD

Claim sustained for the difference between compensation at the now scheduled rate of 80¢ (or 75¢ if that rate covered any of the time in question) and the amounts actually paid the claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.