

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that R. V. Anding be paid at the basic rate of 89¢ per hour for time worked at Hurley, New Mexico, October 17th to 30th, both inclusive, in 1939."

EMPLOYEES' STATEMENT OF FACTS: "An Agreement bearing effective date of December 1, 1938, is in effect between the parties to this dispute. Copies thereof are on file with the National Railroad Adjustment Board.

"R. V. Anding was regularly assigned to a telegrapher-clerk position at Hurley, New Mexico, rate of pay 75¢ per hour. Harry Bladen was regularly assigned to the station Cashier position at Hurley, New Mexico, rate of pay \$7.12 per eight hour day, or 89¢ per hour.

"Effective October 17, 1939, due to the illness of cashier Bladen and a relief cashier not available, telegrapher Anding in addition to the performance of telegraph duties, was required to check in as station cashier and continued in that capacity to and including October 30, 1939. Auditor F. J. Brown made the transfer of station accounts to and from Telegrapher R. V. Anding.

"Each day, October 17th to and including October 30th, Mr. Anding was required to work nine (9) hours, for which he was compensated at the base rate of 75¢ per hour. Mr. Anding made claim for 9½ hours at 89¢ per hour (the cashier rate) for each day October 17th to October 30th, both inclusive. The claim was denied."

POSITION OF EMPLOYEES: "The Telegraphers' Schedule Agreement reads, in part:

'ARTICLE II (b): 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.'

'ARTICLE X (a): Regularly assigned employees will not be required to perform relief work except in cases of emergency, but when required to perform relief work and in consequence thereof suffer a reduction in their regular compensation they shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations.

'(b) Regular relief employees will be allowed \$2.00 per calendar day for expense while away from their headquarters.

positions of Telegrapher-Cashier and rates of pay for such positions on the New Mexico Division:

Station	Position	Rate
Las Cruces	Telegrapher-Cashier	.75 per hour
Silver City	Telegrapher-Cashier	.75 per hour
Magdalena	Telegrapher-Cashier	.75 per hour

"The rate of pay of the position of First Telegrapher-Clerk at Hurley, occupied by Mr. Anding during the period covered by the claim, is the same as that of all three Telegrapher-Cashier positions in the same seniority district, 75 cents per hour. The rate of the assumed new position, therefore, would have been the same as that of the Telegrapher-Clerk at Hurley under the provisions of Section (b), Article II, and the rate of pay and earnings of the incumbent of the assumed new position (whether Mr. Anding or not) would have been no greater than those of Mr. Anding between October 17 and 30, 1939. It is, therefore, difficult for the Carrier to understand why General Chairman Elliott, apparently as a last resort, seeks refuge under Article II (b) of the Telegraphers' Schedule.

"The Carrier is of the firm belief it has shown conclusively herein that there is absolutely nothing in the governing agreement, the Telegraphers' Schedule, upon which a sustaining Award could rest and that, therefore, the claim must be denied.

"The Carrier has not been served with a copy of the employees' submission, other than its statement of claim, consequently it is not informed with respect to the alleged facts, contentions and/or allegations which the employees' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and/or allegations heretofore presented to the Carrier by the employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and/or allegations made by the employees in their ex parte submission, or to any other submission which the employees may make to your Honorable Board in this dispute."

OPINION OF BOARD: As a result of the illness of the cashier, October 17, 1939, at Hurley, New Mexico, R. V. Anding, who was regularly assigned to a telegrapher-clerk position at that place with a rate of pay of 75 cents per hour, was on the above date assigned to certain duties of the cashier, including handling of express account, handling of freight account, and revision of waybills. These duties, however, were only part of the duties of the cashier, which, in addition thereto, consisted of receiving and delivering express and freight, assisting in working trains, handling of ticket account, checking the so-called Chino yard, and handling of correspondence. These latter duties, which were not performed by Mr. Anding in the absence of the cashier, were carried out by other members of the station force. During the time Mr. Anding handled his duties as telegrapher-clerk and the above mentioned duties of cashier, he was relieved of certain clerical work, which was regularly assigned to his position as telegrapher-clerk, consisting of checking yard, making switch lists, maintaining car records, and rendering a certain report. The claim which is made on behalf of Mr. Anding is that he is entitled to be compensated at the rate of 89 cents per hour, which was the rate of the cashier's position.

Article 2 (b) of the current agreement reads:

"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."

On behalf of the carrier it is claimed that no new position was created and that, even if such a position were created, there is no requirement for adjustment of rate of compensation.

We are of the opinion that a new position was temporarily created by the assignment of these duties of the cashier to Mr. Anding. They were not duties ordinarily assumed by a telegrapher-clerk, but were essentially duties of the cashier; and such different duties resulted in a new position of telegrapher-cashier.

In accordance with Article 2 (b), compensation for such position, including the duties which Mr. Anding performed temporarily, should be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district. It does appear from the telegraphers' schedule that at various places on the Division in question, the position of telegrapher-cashier pays 75 cents per hour, which was the rate received by Mr. Anding while performing the duties of telegrapher-clerk; but there is not sufficient proof that the duties performed temporarily were for similar work and responsibility as those of telegrapher-cashiers at other locations on the same division.

This claim should be referred back to the parties to ascertain the compensation for positions of similar work and responsibility in the district.

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 Article 2 (b) was applicable to the position here involved.

AWARD

Claim that a new position was created is sustained, and claim for compensation referred back to parties in accordance with foregoing opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.