

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, 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 and Santa Fe Railway that when the offices of telegrapher and drawbridge-levermen at Orwood, California were consolidated on July 27, 1939, the hourly rate of 71 cents shown in the Wage Scale of the current Telegraphers' Agreement as the rate for the telegrapher at Orwood, should have been applied to the consolidated office; that this hourly rate shall now be made effective retroactively to July 27, 1939, and employees who have worked in the consolidated Orwood Office subsequently, shall be reimbursed accordingly."

EMPLOYES' STATEMENT OF FACTS: "An Agreement last revised as of December 1, 1938, as to rules and rates of pay is in effect between the parties to this dispute.

"The wage scale (rates as of September 30, 1938) of said agreement on page 50 lists the following positions, with rates of pay, at Orwood, California:

Telegrapher	71¢ per hour
Drawbridge-Levermen (3)	64¢ per hour

"The distance between the station (location of the telegrapher position) and the drawbridge (location of the drawbridge-leverman positions) is approximately forty rods.

"Prior to July 27, 1939, the duties assigned to the telegrapher position at the Orwood station were telegraphing and the handling of train orders. Prior to July 27, 1939, the duties assigned to the drawbridge-leverman positions at the drawbridge were those of operating the interlocking plant and drawbridge.

"Effective July 27, 1939, the telegrapher position at the station was abolished, resulting in all telegraph and train order duties previously attached thereto being transferred to the three drawbridge-leverman positions at the bridge; the classification of the latter positions changed to telegrapher-levermen. Concurrent with the transfer of telegraph and train order duties to the three reclassified positions the carrier applied a rate of 71¢ per hour to each. However, with Bulletin No. 16 August 18, 1939, said rates were withdrawn by the said carrier who substituted therefore rates of 67¢ per hour."

POSITION OF EMPLOYES: "There is no disagreement that, effective July 27, 1939, the telegrapher position at Orwood was abolished and con-

years. The Carrier respectfully submits that, considering the facts and Agreements herein presented, this claim must be denied on the basis of the Letter Agreement of February 11, 1931."

OPINION OF BOARD: When the positions, Drawbridge-Levermen, were reclassified as Telegrapher-Levermen, the Board is of the opinion that new positions were created within the meaning of Article 2-(b) reading:

"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."

This conclusion finds support in Awards 417, 1075, 1076, 1077, of this Third Division. The carrier states that the 67 cent rate being paid is in error, and is a misapplication of Article 2 (a) and (b) because, says the carrier, these schedule provisions were modified by a letter agreement of February 11, 1931, and carrier states that as late as August 9, 1940, in a letter to Mr. T. A. Gregg, General Chairman Elliott stated "We do not deny or denounce the letter agreement of February 11, 1931." However, the excerpt from the letter agreement of February 11, 1931, read in its context, does not in the opinion of the Board warrant any other holding than that new positions were created as above stated.

"When new positions are created," the governing rule, Article 2 (b), specifies, "compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district." In circumstances where an old position is transferred into a new one, as in this proceeding, the application of the rule may lead to an increase or a decrease in the rate of compensation fixed for the new position as compared with that paid on the old, and it does not necessarily preclude the establishment of the same rate of compensation for the new position as prevailed on the old. The rates on existing positions of similar work and responsibility in the same seniority district constitute the controlling factor. In other words, the actual rates of compensation on the new positions will depend entirely upon a fair and reasonable application of the standards prescribed in the rule to the facts of each particular case.

It is the function of the carrier, in the first instance, to establish the rate in conformity with these standards; upon protest of the employees, the process of negotiation must be pursued. And if, with continued disagreement after negotiation, it may be assumed to be an appropriate function of this Board, upon finding a violation of the governing rule, to approve or prescribe the rate deemed to conform to that rule, such action can only be taken upon a record adequate not only to disclose the fact of violation but to determine the proper rate in the circumstances. The present record is clearly inadequate for this purpose. The claimants, moreover, not only request that the Board establish a rate upon this inadequate record, but they insist that the rate previously paid to telegrapher at Orwood must necessarily be paid to the Telegrapher-Levermen at the tower. To sustain the claim on such a basis would be to disregard the standards of comparison expressly established by Article 2 (b) upon which the claimants rely. Accordingly, this proceeding will be remanded to the parties for the determination of the proper rate of compensation for the positions involved, in conformity with the standards prescribed in Article 2 (b) of the agreement. Much of the foregoing language is adopted from Award No. 1075 of this Third Division, in which the same rule was involved.

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) is applicable to the positions here involved.

AWARD

The proceeding is remanded to the parties for the determination of rates in conformity with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of June, 1941.