

Award No. 1470
Docket No. TE-1347

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul W. Richards, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

J. M. Kurn and John G. Lonsdale, Trustees

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis-San Francisco Railway, that the proper rate for the agent-yardmaster position at Sikeston, Mo., is \$252.15 per month, and that the incumbent thereof shall be reimbursed for the difference between what he has been paid since October 5, 1937, and what he would have been paid had not the position been improperly reclassified by the Carrier on that date without change in the duties of the position."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing date May 16, 1928, as to rules of working conditions and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

"The position of agent-yardmaster at Sikeston, Mo., involved in this dispute, is covered by said Agreement and rated at \$252.15 per month.

"Effective November 1, 1924, the agent position at Sikeston was consolidated with the position of yardmaster, and rated at \$240.00 per month in accordance with the provisions of Article XII-(6) of the Telegraphers' Agreement. This monthly rate was increased to \$252.15 effective August 1, 1937, by Mediation Agreement A-395.

"Effective October 5, 1937, the Carrier, without making substantial change in the duties and responsibilities of the position, unilaterally changed the title of the position to that of agent and unilaterally fixed an hourly rate of ninety-nine cents (99¢), or the equivalent of an average of \$206.57 per month."

CARRIER'S STATEMENT OF FACTS: "Telegraphers' Schedule effective March 1, 1924, which was rewritten January 1, 1925, contained Article XII, Paragraph 6, reading as follows:

'ARTICLE XII.

'(6) Whenever position of Yardmaster is consolidated with position of Agent covered by this Schedule, Yardmaster's rate of pay will apply, provided Yardmaster's rate of pay is higher than rate provided in Schedule for Agent's position. The monthly rate shall not be less than Agent's hourly rate multiplied by two hundred forty (240) hours. Position thus rated and paid shall not be subject to the provisions of Article Two (2) of the Agreement.'

and in accordance with all of the other terms of the agreement covering an agent position.

- "2. Had there been any thought the Carrier did not have the right to discontinue an agent-yardmaster position and create an agent or an agent-telegrapher position, a rule to that effect would have been included in the agreement as was done in the case of a non-telegraph agent being substituted for an agent-telegrapher. No such rule is contained in the agreement and no such rule would have been agreed to by the Carrier had it been requested. Statement of Mr. Kurn, as shown in this submission, is very positive that he did not and never intended to agree to any such handling.
- "3. Agreed rule covering agent-yardmaster positions has been in effect since September, 1922. Since that time new schedules were made effective March 1, 1924, December 1, 1925, and May 16, 1928. The May 16, 1928, agreement was amended effective August 1, 1938. Prior to the May 16, 1928, agreement, and amendment effective August 1, 1938, agent-yardmaster positions have been discontinued and agent or agent-telegrapher positions created at the same station. No rule was put in either the May 16, 1928, agreement, or in the amendment effective August 1, 1938, to prohibit this practice. Similarly, telegrapher-cashier positions have been discontinued and telegrapher positions created without any change in rule in the agreements when rewritten or amended.
- "4. List of all pending and all unadjusted cases was submitted by the General Chairman, O. R. T., February 20, 1934, which did not include instances where agent-yardmaster's positions had been discontinued and agent or agent-telegrapher positions created at the same stations; neither did it include other similar cases such as discontinuing telegrapher-cashier, Pittsburg, Kansas, and creating position of telegrapher.
- "5. The statements we have submitted of business handled at Sikeston show conclusively that there was good reason for establishing position of agent-yardmaster at Sikeston when it was done voluntarily by the Carrier, November 1, 1924, and, similarly, good reason for discontinuing the agent-yardmaster position October 5, 1937.
- "6. It is against all principles of good management of the property to say that if we once establish a position of agent-yardmaster at a station, we are forever bound to retain such position at the station. Such a principle could not be founded upon efficient operation of the railroad and would certainly result in few, if any, agent-yardmaster positions being established. If we need an agent-yardmaster, we should have the right, as the rule contemplates, to establish such a position and, similarly, we certainly feel that where such a position is once established and is no longer necessary, we have the same right to discontinue it and pay the position that is established in accordance with the agreement rules covering the position established, and that the positions should be paid and rated according to the work they are assigned and required to do.

"It is our opinion that there is no merit whatsoever to this claim and that, for one or all of the several reasons shown in our position, the claim should be declined."

OPINION OF BOARD: By bulletin, effective November 1, 1924, the Carrier abolished the position of Agent at Sikeston and appointed W. T. Malone Agent-Yardmaster with jurisdiction over Sikeston yards and station. For some time immediately preceding November 1, 1924, W. T. Malone had been agent at Sikeston. On October 4, 1937, the Carrier bulletined that "Effective October 5, 1937, position of agent-yardmaster, Sikeston, is abolished and agent position established, rate 99¢ per hour, assigned hours 8:00 A. M. to 5:00 P. M. daily except Sunday." There is no disagreement in the record concerning the rate of pay of either of the two positions. The matter of dispute between the parties is embodied in the proposition stated in the claim, to the effect that on October 5, 1937, the position of agent-

yardmaster was improperly reclassified by the Carrier without change in the duties of the position.

To sustain this proposition the Petitioner invokes as a governing rule Article XII, (5), which reads:

"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 established."

This Article is identical with Paragraph (b) of Article III of Supplement No. 13 to General Order No. 27 issued by the Director General of Railroads December 28, 1918. Addendum No. 1 to Supplement No. 13 interprets that portion of aforementioned Paragraph (b) of Article III, reading:

"or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established."

as meaning the following:

"The intent is to maintain the rates of pay and conditions of employment established for all employes coming within the provisions of Supplement No. 13 to General Order No. 27 where the duties and responsibilities of the position are substantially unchanged. In the event that there is a substantial increase or decrease in the duties and responsibilities of the position or a change in the character of the service, unless existing schedule agreement prevents change in compensation on account of substantially changed conditions, the rate for such substantially changed positions shall be established by the regional directors based upon analogous positions of similar scope and responsibility in the same seniority district, or in the event that there is no analogous position in the same seniority district, then upon analogous positions in the locality."

Citing the Addendum the Petitioner contends that there was no substantial decrease in the duties and responsibilities or change in the character of the services performed on the position of agent-yardmaster at Sikeston after October 5, 1937, than were performed prior to that date and since November 1, 1924, and therefore, according to Petitioner, there was a mere change of title of the position, unauthorized under Article XII, (6), in order to arbitrarily change the rate of pay. Thus the issue becomes one of fact, and the question is whether the duties and responsibilities of the agent-yardmaster position were substantially unchanged on October 5, 1937.

The Carrier's showing in that respect indicates that prior to November 1, 1924, there had never been a position of yardmaster at Sikeston, nor has there been since that date aside from the agent-yardmaster position herein involved. Switching at Sikeston has always been done by road crews. No yard crews have been employed under yard schedules. It is also shown that in 1924 the volume of switching was such that during a good portion of that year a road switcher crew was assigned to Sikeston, devoting its entire time to station switching at that point. Carrier's tabulation of time worked in switching at Sikeston during the period October 21, 1924, to November 15, 1924, inclusive, shows five hours on one day, seven or more but less than eight hours on six days, eight or more but less than nine hours on nine days, nine or more but less than ten hours on four days, and ten hours or more on three days. According to Carrier's statement in the record, which appears to be uncontradicted, the daily switching at Sikeston now averages not more than one hour and 25 minutes. There is also in the record a table of tons of LCL freight handled, total number of shipments handled, and total car loads received and forwarded, during the period May, 1923, to April, 1924, inclusive, and likewise for the period April, 1937, to March, 1938, inclusive. For the 1923-1924 period the totals were, LCL tons handled 5,279, shipments handled 20,106, cars received and forwarded 5,228. For the 1937-1938 period the totals were LCL tons handled 1982, shipments handled 9,054, cars received and forwarded 2,574.

Petitioners show that Sikeston is a highly competitive and important point, earning approximately \$35,000 average monthly revenue, coming in large part from the business afforded by a Milling Company at Sikeston. The latter's plant is located about one-fourth mile north of the railroad station, and is served by a railroad yard of several tracks. In addition, passing and team tracks are maintained at Sikeston. The total capacity of all the tracks is 284 cars. Petitioner states that, to more successfully and conveniently serve its patrons, including the Milling Company, the Carrier created the composite position agent-yardmaster, effective November 1, 1924. O. N. Watts was the incumbent of the position of agent-yardmaster immediately preceding October 5, 1937, and thereafter was incumbent of the position of agent. His testimony in a certain investigation held September 29, 1938, was introduced by Petitioner. Therefrom it appears that from September, 1936, to August, 1937, the revenues at Sikeston were \$282,904.30, and that they increased during the succeeding 12 months period to \$347,121.18. Mr. Watts' testimony also detailed the routine of work that was being performed by him at Sikeston. In the morning he checked the yard and made up yard report. Made up 22 report, made up switch list for the local freight, supervised and watched the switching during the period the crew was there which is along in the middle of the day, also delivered freight, did billing occasionally—though not much, answered all correspondence, answered telephone which rings a great deal. The force in the office comprise a cashier and three operators. This force gave Mr. Watts time to solicit business for two hours on a great many days but not every day, and on some days more than two hours. During July and August he did not have time to solicit. A part of his routine was to make out a switch list for the Milling Company and then from time to time to change it as the Milling Company directed from their offices, and to make trips to the crew with the additional information. Mr. Watts stated he did not tell the crew how to do the work, and did not supervise the individual moves.

Viewed as a whole the record shows that on October 5, 1937, there had been a very substantial reduction in the amount of yard work coming under a yardmaster's jurisdiction from that existing when the agent-yardmaster position was bulletined. In the opinion of the Board the duties of the position agent-yardmaster were not substantially unchanged on October 5, 1937, but on the contrary there had come about a decrease in duties and responsibilities to the point where the duties and responsibilities were within the usual scope of the position of agent as shown in the docket. The Board discovers no substantial ground that sustains the claim.

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 Bulletin effective October 5, 1937, was not violative of the rules cited by Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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