Award No. 1788
Docket No. TE-1761

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Alton Railroad that, the Carrier violated the terms of the telegraphers' agreement when it arbitrarily reduced the rate of pay for the three levermen positions in the tower at Jacksonville, Illinois, from 72½ cents per hour to 65½ cents per hour effective April 20, 1941, prior to conclusion of conferences with the Committee; and that the rate of pay provided in the telegraphers' agreement for these positions shall be restored retroactive to the date arbitrarily reduced, and subject thereafter to the result of conference conducted in an orderly manner as provided by Rule 23 of said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date February 16, 1929, as to rules and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

The positions of the three operator-levermen at Jacksonville, Ill., are covered by said agreement and at the rate of 72½ cents per hour.

Under date of March 20, 1941, the Carrier advised the Committee that on April 19, 1941, all telegraph instruments would be removed from the tower at Jacksonville, at the same time serving thirty days' notice of its intention to reduce the rate of pay for the positions of operator-levermen in the tower from 72½ cents to 65½ cents per hour.

The proposed reduction in rates was immediately protested by the Committee and conferences begun with the Carrier on the protest, which conferences have not yet been terminated when this claim is filed.

During the period the conferences were in progress, the Carrier, on April 20, 1941, placed its proposed rate of 65½ cents per hour in effect on the three positions without reaching agreement with the Committee on any change in the rates of pay.

CARRIER'S STATEMENT OF FACTS: Prior to October 15, 1923, the three positions in the Jacksonville Tower were classified as levermen. Effective that date, because of the Chicago, Burlington and Quincy desiring telegraph service in the tower, the positions were changed to operator-levermen and rates of pay were increased 7 cents per hour. Effective April 20, 1941, because of notice served by the Chicago, Burlington and Quincy that they would no longer require telegraph service in this tower, the three positions were changed from operator-levermen to levermen and rates of pay were decreased 7 cents per hour.

It is the Carrier's position that this rule does not apply to this dispute as rates of pay were not changed, but even if it did apply the spirit of the rule was complied with in that an effort was made by mutual agreement, as referred to in the rule, to fix rates of pay on the new positions, and failing in this the Carrier served thirty days' notice of its intention to reclassify positions and fix new rates of pay based upon the differential originally established on the positions.

The Carrier has demonstrated that the bases of claims made by the Employes are without foundation. In addition to the proved fact that there is no reason why the Carrier should not have acted as it did, affirmative support to its action is given by Award 949 of your Board. In that case, as in this, changes in operation had eliminated the performance of a certain class of work at a tower and the Carrier had reclassified the positions at that point to conform with the duties thereafter remaining. However, in that case no attempt was made to enter into any negotiations until after the reclassification of the positions. In the instant case negotiations were instituted by the Carrier more than five weeks before the change was actually made and the change was not then made until it was apparent that no purpose could be served by further conferences. While the agreement on this property contains no rule similar to Regulation 8-A-1, which was relied upon by the employes in their prosecution of the claim settled by Award No. 949, Regulation 8-C-1, upon which the company based its action, is almost identical to the paragraph of Rule 8 in this Carrier's agreement, which has previously been quoted herein. The "Opinion of the Board" in Award No. 949 stated in part, "The penalty for failure to confer and agree in advance of reclassification is not the retention of the existing position until an agreement is reached. When the parties fail to agree upon the appropriate rate of pay for the proposed reclassified position, carrier may make the reclassification and put into effect the rate it considers appropriate for the reclassified position, and if the employes are dissatisfied therewith they may bring the dispute to this Board for adjudication," following which the award denied the claim of the employes.

The Carrier has demonstrated that on April 20, 1941, the work of telegraphing was entirely and completely removed from the positions at Jacksonville tower, that this removal in fact automatically reclassified the positions from operator-levermen to levermen, that the admitted proper differential between the positions in 1923 was 7 cents per hour and that this must be presumed to still be the proper differential inasmuch as the only changes in the duties on the positions in the intervening years had been a serious and continuing decline in the amount of traffic handled by the employes involved.

The claim of the Employes is without support under rules in agreement or past practice and should be denied.

OPINION OF BOARD: The facts of record are not in dispute and need not be restated. Claimants contend that carrier without completing conference or negotiation arbitrarily reduced the rate of pay for three levermen positions at Jacksonville Tower. Carrier contends that the duties of these three positions were materially changed and that they became new positions and were rated and paid as such under Rule 8 of the Agreement.

Claimants rely first upon the Railway Labor Act and assert a violation of Section 2, Seventh, and Section 6 of that Act. The Act only relates to changes in rates of pay, rules, or working conditions of "a class" of employes, and is not, therefore, applicable to this present dispute which relates to the rate of pay of three particular individuals and not a class of employes. Award 644.

Claimants next assert a violation of Rule 23 of the Agreement. It is apparent from the record that both parties considered that Rule 23 should be given some effect, and on March 20, 1941 the carrier gave 30 days' notice

of the change as required by Rule 23. Thereafter a conference was held between J. M. McDonald, Manager of Personnel, and General Chairman Gentz on April 7, and another conference on April 18 at which there was present the Vice President, Order of Railroad Telegraphers. Neither of these conferences resulted in agreement and on April 20 the rate of pay for the tower positions was changed by the carrier. Without deciding that Rule 23 is applicable (see Award 644) we are of the opinion that its requirements were met. The carrier gave the 30 day notice required and at least two conferences were held thereafter between authorized representatives of the carrier and employes. The record fairly indicates that the conflicting views of the parties could not be reconciled and that any purpose conference might serve had ended.

While argument in support of the claim is more or less limited to the violation of the Railway Labor Act and Rule 23, nevertheless, we believe there is presented to this Board by the record the question of whether Rule 8 is applicable to the dispute and, if so, whether it was properly applied. This is the rule upon which the carrier throughout the record seeks to justify its acts and, if not presented for our consideration by the claimant, we believe, in view of the carrier's contentions, it must be given our consideration.

We are of the opinion that Rule 8 is applicable to this controversy. We think that the change in work was of such a nature that in reality a new position was created within the meaning of that part of Rule 8 which provides: "When new positions are created, compensation will be arranged in conformity with positions of the same class shown in this schedule." However, the carrier has misapplied the rule. Rather than fix the new rate "in conformity with positions of the same class" as required by the rule, the carrier has applied a differential which existed approximately twenty years ago between operator-levermen and levermen. Clearly, the application of such a differential is not a compliance with the rule. Neither party has submitted the rate for positions of the same class and, under the present record, the Board is, therefore, not in a position to make a final disposition of the claim. As said by this Board in Award 1074, "It is the function of the carrier, in the first instance, to establish the rate in conformity with these standards; upon protest of the employes, 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 parties at the prior conferences were in complete disagreement as to the applicable rule. The Board having now held that Rule 8 is applicable, the parties should by conference and negotiation be able to agree upon a proper rate under the provisions of that rule.

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 claim be referred to the parties for negotiation on the basis of Rule 8 and, if not settled, it may be presented to this Board with evidence

upon which this Board may fix a rate in compliance with the provisions of that part of Rule 8 set forth in the Opinion.

AWARD

Claim referred to parties as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942.