Award No. 2665
Docket No. TE-2625

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that effective November 1, 1941, Telegrapher H. J. Davidson employed as Teletype Operator at Sparks, be compensated at the highest rate of pay due for this service based upon experience, the records indicating that claimant was on the date specified and subsequent thereto performing service entitling him to such compensation.

EMPLOYES' STATEMENT OF FACTS: Claimant Halvard J. Davidson occupied position No. 292, Teletype Clerk at Sparks. He acquired the position under Telegraphers' Bulletin No. 7, dated Ogden, July 2, 1941. Mr. Davidson has a seniority date of June 22, 1941. Mr. Davidson's work as a Teletype Clerk beginning October 19, 1941 and continuing thereafter indicates that he handled the same volume of business as other Teletype Clerks being paid the maximum rate under agreement provisions. Mr. Davidson having demonstrated by actual work that he is possessed of the experience and capabilities of performing the same volume of work as Teletype Clerks with maximum rating, is entitled to the maximum rating under the provisions of the agreement in effect.

There is an agreement in effect between the parties to this dispute and copy of this agreement is on file with this Board.

POSITION OF EMPLOYES: EXHIBIT "A" to "M" inclusive are shown as a part of this submission.

Claim is filed under Section 6 of the Teletype Agreement dated San Francisco, Calif., January 11, 1930 and that portion of Memorandum of Agreement dated San Francisco, Calif., September 5, 1929 that refers to rates of pay for Punchers.

We quote Section 6 of the Teletype Agreement, first sentence of which relates to this claim:

> "Sec. 6. The rate of pay for Teletype Clerk shall be the established puncher rate. The rate of pay for Telegrapher-Teletype Clerk shall be the established maximum puncher rate for time used on Teletype machine, and the established telegrapher rate for time used as Morse telegrapher. For such combination service the telegrapher shall receive not less than four (4) hours pay at the telegrapher's rate for each regular eight (8) hour day worked."

We quote from the Memorandum of Agreement dated San Francisco, Calif., September 5, 1929, that portion which relates to this claim:

CONCLUSION

The carrier submits that having established that the claim in this docket is without basis or merit it is incumbent upon the Division to deny it.

OPINION OF BOARD: Prior to May 16, 1929, printer clerks (punchers) and teletype clerks were compensated at an agreed rate of 55¢ per hour, regardless of experience. On said date the carrier voluntarily increased the above rate in accordance with the following schedule:

(a) Upon entering service and until one year's experience is acquired.....55¢ per hour,

(b) After one year's experience.....60¢ per hour, and

(c) After two years' experience.....65¢ per hour.

As of September 5, 1929, the parties entered into a Memorandum of Agreement wherein it was provided:

> "Subject to change, punchers shall be paid 55¢ to 65¢ per hour, according to experience. . . ."

These 55¢ to 65¢ contract rates were afterwards increased so as to provide for rates ranging from 60¢ to 70¢ per hour; and on January 11, 1930, said rates were extended to apply to teletype clerks.

On June 22, 1941, the claimant, a young man eighteen years of age, who had graduated from high school during that month, was employed by the carrier as a teletype operator at the 60¢ per hour rate. It appears that by November 1, 1941, the claimant became as proficient in his work and in the operation of a teletype machine as his fellow employes who had had more than two years' experience and who were paid the maximum rate. The claimant thereupon demanded that henceforth he be paid at the 70¢ per hour rate.

The question here is whether the words, "according to experience," as used in the effective Memorandum of Agreement, have reference to actual proficiency and qualifications, or whether said phrase refers to the arbitrary antecedent practice of basing advancement upon the length of service in accordance with the schedule set up by the carrier prior to September 5, 1929. The petitioner contends for the first proposition; the carrier for the second.

If the Agreement had provided that the employes covered thereby would receive an advance in pay "according to ability," instead of "according to experience," our duty would be plain and we would feel obliged to sustain the claim. However, according to the dictionary and legal definitions, "experience" embraces an element of time. Webster's New International Dictionary says, in defining the word: "State, extent or duration of being engaged in a particular study or work." See, also, Arthur v. Pittsburgh (1928) 330 Pa. 202, 198 A. 637. We conceive it to be our duty to so construe the Agreement as to render its meaning definite and certain, if that can be consistently done. To hold that "experience," as used in the instrument, is synonymous with "skill" or "ability" would open the door to unending controversy and confusion. If, as here, an employe might contend that he was sufficiently skilled to merit the maximum rate after a few weeks' service, the carrier might, by the same token, take the position that another employe who had worked faithfully more than three years was yet so unskilled as not to be entitled to more than the minimum. In holding that it was the apparent intent of the parties to continue the former practice with respect to the graduated step-up rate, based upon the length of service, we avoid uncertainty and serve the interests of all concerned.

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 carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.