Award No. 3410
Docket No. TE-3217

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers, Division No. 25—

(a) That Carrier violated the provisions of Telegraphers Agreement when a telephone was installed at Dodge, Texas and the position of small non-Telegraph-Agent was not reclassified to position of Agent-Telegrapher.

(b) That the position at Dodge be now Classified as Agent Telegrapher and a rate of 89 cents be established effective September 11, 1944. That being the date of installation of the telephone and inauguration of communication service at Dodge.

(c) That the Employe or Employes involved be compensated retroactively from September 11, 1944.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective October 15, 1940 is on file with the National Railroad Adjustment Board.

This agreement includes the position of Agent-Telegrapher, Dodge, rate 70 cents per hour. Applying the increases granted would make the present rate 89 cents per hour had the classification remained unchanged.

The following letter was received by General Chairman Bruce.

"At Houston, Texas
July 23, 1941

Mr. J. M. Bruce,
General Chairman, ORT,
Palestine, Texas.

Dear Sir:

Assistant General Manager David made an agreement with General Chairman Berry for a non-telegraph Agency at Dodge, rate 48¢ per hour.

December 1, 1936, account log trains requiring train orders at Dodge, the office was reopened as a telegraph office. The logging company has discontinued operation and has taken up their connection with our line at Dodge and there is no longer a necessity

Rule 34 provides that "All telegraph wires and **dispatchers' telephone circuits** will be removed from non-telegraph offices." No telegraph wires are installed in the station, nor do the Employes contend that there are; and the Agent in her statement confirms the fact that the telephone installed in the office is not connected with the **dispatchers' circuit.** Attention of the Board is directed to the fact that Rule 34 (b) states that: "All telegraph wires and **dispatchers' telephone circuits** will be removed from non-telegraph offices", and makes no mention whatever to message phones, such as the phone installed in the station at Dodge on September 11, 1944. This fact is, in itself, a clear indication that it was not the intent of the parties to isolate the non-telegraph agents from all wire communication with the rest of the railroad. The phone installed in the station at Dodge is used as a conversation phone only and not for any purpose pertaining to the movement of trains. There is nothing in Rule 34, nor in any other rule of the Telegraphers' Agreement which prohibits the installation of the telephone installed at the station at Dodge to be used by the agent for the purpose hereinbefore stated by the Carrier and by Agent Matheson.

In her statement submitted as Carrier's Exhibit "A" the agent at Dodge states that the phone is not used to talk to the dispatcher, and that it is not connected with the dispatchers' circuit; as a matter of fact, as stated in Exhibit "A", no one can ring the agent on the message phone, that it can only be used by the agent to call the Houston or Palestine telephone operator.

In other words, the agent at Dodge, according to her own statement, is performing no service that would entitle her to an agent-telegrapher's rate of pay, and that being so, the question arises who is or has been hurt by reason of the installation of the telephone, and who under the circumstances is entitled to the agent-telegrapher's rate of pay, and why, as contended by the Employes.

In this connection attention of the Board is directed to Paragraph (c) of the Employes' Ex Parte Statement of Claim reading: "That the Employee or Employees involved be compensated retroactively from September 11, 1944". This part of the claim is vague, indefinite, and uncertain in that it does not specifically name an individual or individuals for whom compensation is demanded retroactively to September 11, 1944, and in that respect is, in fact, hypothetical.

As evidence of the fact that the use of a telephone by the agent at Dodge for the purpose previously described is no innovation in the facilities placed at the disposal of agents at non-telegraph agencies on this property for use in the conduct of their business, attention is directed to the fact that a similar telephone facility is and has been for several years installed in the non-telegraph stations at Derby and Hutto, Texas. We have no record of claim or protest from the Employes as a result of telephone being installed and used by the non-telegraph agents at those two stations for the same purpose that the telephone is used by the non-telegraph agent at Dodge, Texas.

When consideration is given to the basis for the Employes' contention and claim in this case, together with the signed statement of Agent Matheson (Carrier's Exhibit "A"), which statement unquestionably obviates any basis for the Employes' contention and accompanying claim, together with the fact that there is no rule in the Telegraphers' Agreement prohibiting the installation of the telephone in the station at Dodge for use by the agent for the purpose hereinbefore stated, it is clearly evident that the contention of the Employes should be dismissed and the claim accordingly denied.

OPINION OF BOARD: By agreement of parties the former position of Agent-Telegrapher at Dodge, Texas, was reclassified to Agent-Non-Telegrapher on September 1, 1941. The former position of Agent-Telegrapher was paid 70 cents an hour; with subsequent increases it would now make the position pay 89 cents an hour.

On September 11, 1944, a telephone was installed in this station for the purpose of enabling the agent to place orders with the car distributors at Palestine and Houston for cars at the station, and to obtain information on

rates and routes from the Traffic Department. The telephone is not connected with the Dispatcher's telephone circuit and can only be used by the Agent to call the PBX operator at Palestine or Houston. No train orders have been copied by the Agent since this telephone was installed. Prior to September 1, 1941, the Agent-Telegrapher at Dodge performed this work, and also handled train orders.

The issue here is whether Dodge is a non-telegraph agency. The Agent now receives messages and reports in reference to orders of cars, routes and rates. In the opinion of this Referee Awards Nos. 849 and 851 of this Division are controlling and, therefore, the claim should be sustained.

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 Agreement was violated by the Carrier.

AWARD

Claim (a, b and c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1947.