

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver & Rio Grande Western Railroad:

(a) That the duties and responsibilities of the three telegrapher positions at Provo, Utah, were materially increased, (1) when effective December 5, 1950, a remote control unit was installed in the telegraph office at Provo for the handling of trains from the Tintic Branch and off the Springville Canning Company spur at Springville, Utah; (2) when effective May 1, 1951, a remote control unit was installed in the same telegraph office at Provo for the handling of trains over the Union Pacific Railroad between Provo and Geneva, Utah; and

(b) That as a result of this material increase in the duties and responsibilities of the three positions, the rates of pay shall be increased nine cents (9c) per hour effective May 1, 1951.

EMPLOYEES' STATEMENT OF FACTS: There was in effect an Agreement bearing the date of June 1, 1946 including changes and agreed to interpretations as shown in the reprint effective February 1, 1952. The three telegrapher positions at Provo, Utah, were covered by this agreement.

Prior to December 5, 1950, when it was necessary for trains to leave the Tintic Branch or the Springville Canning Company spur to enter the main line at Springville, the agent-telegrapher at Springville was called, and authority for the movement was issued for the trains in question by the dispatcher located at Salt Lake City through the medium of a train order handled by the agent-telegrapher at Springville.

On December 5, 1950, a remote control unit was installed at the Provo telegraph office (ticket office) and the telegrapher on duty was instructed to handle and regulate the movement of these trains by means of a control panel located there, for governing the operation of signals.

Prior to May 1, 1951, all switching train movements over the Union Pacific Railroad between Provo and Geneva were handled by means of train orders which were issued through the telegrapher at Provo. Effective May 1, 1951, a centralized traffic control system was placed in operation between Provo and

adjustments in rates of pay, the principle that it does not have the authority to make changes in rates of pay, or to increase rates of pay, but only to apply the rules is so well established as not to require the citation of authority. Being unable to find any right conferred upon the Board by the subject Agreement to settle the issue in dispute, the case is remanded."

The attention of your Honorable Board is also invited to your Awards 1586, 1684, 2202, 3373 and many others with respect to fixing rates of pay.

The Carrier's position that your Honorable Board is without authority to fix rates of pay—in the instant case—is fortified by Rule 2 (C) of the current Telegraphers' Agreement, which rule for ready reference reads:

"(C) Positions (not employes) shall be rated. Change in classification of positions or rates of pay will be made only by agreement between the parties hereto." (Emphasis supplied)

and which rule was first incorporated—at the request of the Employes—in the Telegraphers' Agreement effective June 1, 1946.

Under the provisions of Rule 2 (C), admitting but in no manner conceding, even if the Railway Labor Act gave your Honorable Board the right to fix rates of pay, Rule 2 (C) would not permit your doing so.

The rule is clear and is not susceptible to ambiguity. It clearly provides—as it states—that "change in classification of positions or rates of pay will be made only by Agreement between the parties hereto." In other words, change in classification of positions or rates of pay can be made by—and no one else—the Carrier and the Order of Railroad Telegraphers.

It is the Carrier's position in this case that the claim should be denied.

All data in support of Carrier's position have been submitted to the Employes and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by Employes is reserved by Carrier. (Exhibits not reproduced)

OPINION OF BOARD: In December 1950 and again in May of 1951 the Carrier installed certain control devices at Provo, Utah which contained a total of three levers governing train movements at points remote from the operator's station. Employes file claim as indicated.

The Employes' claim generally appears to be based upon the provisions of Rule 2 (b) which provides that 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. To bring that Rule into operation would require a finding by this Board that the operation of the devices installed at Provo so changed the duties of the telegrapher as to, in effect, constitute the same as a new position. There is no support for such a finding on the basis of the record here presented. Nor did the employes themselves seem to have so felt in connection with previous instances where similar installations have been made and adjustments in rate negotiated without rebulletining of the position involved.

Rule 2 (c) of the applicable Agreement provides that positions (not employes) shall be rated and that change in classifications of positions or rates of pay will be made only by agreement between the parties. The parties by their conduct under the agreement in the negotiation of adjustments in the instances mentioned in the previous paragraph have recognized 2 (c) as the governing rule. In other words, negotiation is the indicated course here. This Board has no inherent authority to fix rates of pay. It must be bound by the Agreement as the parties have written it. There being no rule to support the claim we find that it must be denied.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.