

Award No. 8158
Docket No. TE-7434

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY (Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway System that:

- (1) Carrier violated the Agreement when, beginning April 6 1949 it applied the rate of pay initially negotiated for positions of telegrapher-towermen and agent-telegrapher located in the Tower at Turner, Kansas to positions of agent and telegrapher-clerk in the new yard office at Turner; and
- (2) The Carrier further violated the Agreement when it failed to reclassify the positions in accordance with the nature of the work performed, and failed to adjust the rates for the new positions in accordance with the Agreement when it required the telegrapher-clerks at Turner, Kansas to assume the responsibilities and perform the work of directing the movement of trains on main line between Turner and "AY" Tower against the normal current of traffic.
- (3) (a) The Carrier shall pay to the occupant of the positions at Turner, Kansas except the agent's position, for each day during the period of April 6, 1949 to and including September 2, 1953, an amount equivalent to 15 cents per hour upward adjustment due in the rates of said positions because of failure to establish the proper rate.
(b) Beginning with September 2, 1953, the Carrier shall establish a basic rate of \$2.01 per hour for said positions and retroactively pay the occupant thereof an amount equivalent to the difference between what they were paid and the \$2.01 per hour due them for each day said amount has been improperly withheld since September 2, 1953.
- (4) The Carrier shall establish a basic hourly rate of \$2.13 per hour for the position of Agent at Turner, Kansas as of September 2, 1953 and shall pay to the occupant or occupants of this position the difference between \$2.13 rate and the rate which it has arbitrarily applied for each day since September 2, 1953.

Agreement rules in effect between the parties hereto and should, for the reasons expressed herein, be either dismissed or denied in its entirety.

All that is contained herein has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claims concern the alleged failure of the Respondent to adjust rates of pay upward when positions were created or reclassified by the change of type and quantity of work assigned to the positions in question.

The Organization asserts that the installation of CTC equipment in the Carrier's facilities at Turner, Kansas resulted in the reclassification of work and positions to the end that new positions were in effect created, and that the wage rates for such positions were not adjusted upward as required by the cited rules.

The Respondent took the position that while Claims 1 and 3(a) were properly before this Board the balance of those shown are not properly here in that while Claims 1 and 3(a) were handled on the property the rest were by way of supplement or amendment on June 8, 1954, and were not handled on the property, thus, cannot be heard by this Board.

As to the merit of those claims which it is admitted are the proper subject of consideration the Respondent asserted that no new duties or functions were created, but rather, a new manner or method of performance was established. It was asserted that a mere increase in volume of work could not properly be said to justify a wage increase, but that in any event wage rates could not be established by Board fiat.

The basic issues here involved are similar, in all factors that are considered controlling, to those that confronted this Board in Award 7445, which involved the same parties that are here present:

Therein (Award 7445) in regard to the handling of the claims on the property we stated " * * * attempted to amend the original claim by the inclusion of new matter requesting an additional monetary adjustment. The carrier refused amendment to a claim which had already been progressed to and handled by the Carrier's highest officer designated to handle such matters. The employees have attempted to expand this claim beyond its original scope. The Board finds that * * * were not handled as required in Circular No. 1 of the Rules of the Board nor by Article V of the Agreement and will dismiss them without prejudice should employees see fit to progress a new claim under applicable procedures."

Likewise in Award 7445 we stated:

* * * * *

"It is significant that at no time do employees contend that the additional duties, the operation of a greater number of levers, was work of a nature not properly assignable to Towermen. The Agreement contains no provision requiring pay adjustments for increased duties and responsibilities and the rule relied upon applies only 'when new positions are created.' This record, granting an increase in work, will not sustain a finding that the character of claimants positions was so altered as to create the establishment of new positions.

"The Board is not authorized to establish rates of pay or otherwise rewrite contract provisions. If a higher rate of pay is requested because employees feel that additional duties are in fact of sufficient proportion to entitle them to that higher pay they are relegated to

the procedures and provisions contained in Section 6 of the Railway Labor Act. See Awards 7083, 7093 and 7170."

What was controlling there is likewise applicable here.

The claims are not meritorious.

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 Employees 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 effective agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.