

Award No. 9961
Docket No. TE-8559

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Fort Worth & Denver Railway, that:

1. Carrier violated the Agreement commencing January 1, 1955, when it failed and refused to compensate A. G. Rummel, agent, Chillicothe, Texas, at the rate of \$2.09½ an hour instead of monthly rate allowed.

2. Carrier shall be required to compensate A. G. Rummel for the difference between amount paid and amount due at the rate of \$2.09½ an hour and time and one-half, said rate for any overtime calls, rest day or holiday work.

3. Any other employe having performed or now performing work as agent, Chillicothe, Texas, shall be paid this difference between amount allowed and compensation to which entitled in accordance with the foregoing.

4. Carrier shall permit joint check of its records to ascertain amounts due and names of employes entitled thereto.

EMPLOYES' STATEMENT OF FACTS: There was at all times hereinafter mentioned in full force and effect a collective bargaining agreement entered into originally by and between Ft. Worth & Denver City Railway Company (The Wichita Valley Railway Company) which agreement was later adopted by Ft. Worth and Denver Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers hereinafter referred to as Employes or Telegraphers. The agreement was effective July 1, 1940 and was in several respects amended. The agreement, as amended, is on file with this division of the Adjustment Board and is by reference hereby included in this submission as though set out herein word for word.

The dispute involved herein was handled on the property in the usual manner through the highest officer designated by management to handle such disputes and failed of adjustment. Since the dispute involves interpretation of the collective bargaining agreement this Board has jurisdiction of the

since by long-established practice, acquiesced in through the years by the Employees, non-telegraph agents have been permitted to use carrier telephone, such use cannot be construed as an exception.

(6) In an economic sense, the Petitioners are not looking forward in taking the position they have. It is obvious if non-telegraph agents are prevented from using the carrier telephone to assist in giving Carrier's patrons good service, a sufficient decline in business will inevitably result at many of our non-telegraph agencies to warrant discontinuing the agencies altogether.

The Carrier has conclusively proven that there is no basis for this claim and respectfully requests the Board to find the claim without merit and deny it accordingly.

The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

OPINION OF BOARD: This dispute concerns the Carrier's unilateral reclassification in October 1954 of the long established Agent-Telegrapher position at Chillicothe, Texas. The change came about when the Centralized Traffic Control system was extended to Chillicothe enabling train movements in that area to be controlled directly by the dispatcher's office at Wichita Falls, Texas. At that time, the Agent-Telegrapher position was discontinued and a Non-Telegrapher Agent position with a much lower rate of pay established. It is Petitioner's contention that the change of position was in name and compensation only and that a substantial amount of Agent-Telegrapher duties remained to be performed after the reclassification had taken place.

The question of Carrier's right to reclassify a position or for that matter to abolish it is not involved. What does concern us is whether or not Carrier merely changed the name and wage rate of the position without materially altering its duties and responsibilities.

The problem is really one of proof. The mere change in title and even the removal of the Morse Telegraph equipment from the Chillicothe office do not establish the propriety of the reclassification. On the other hand, as we pointed out in Award 9572, while the telephone, which is still in the office, may have superseded the telegraph in many ways, not all telegrapher rights have attached to it. That telegraphers do not have the exclusive right to use telephones has been made clear by Awards 5181, 5660, 7968, 9572 and numerous others, and no provision in the applicable Agreement calls for an exception to that general principle.

In this posture of the record, it is incumbent upon the Petitioner to show by clear and specific proof that the duties and responsibilities of the two positions are substantially the same. There is considerable evidence that the Claimant was required to use the telephone frequently during the period covered by his claim to send messages regarding the availability of certain cars. However, we are not persuaded that these calls, with isolated exceptions, amount to anything more than informational messages. So far as the record indicates, and unlike the situation in Awards cited by Petitioner, those calls did not relate to train orders or movements or constitute messages, orders or reports of record. It is not sufficient that Claimant may have reduced to writing the substance of many of the telephone messages he sent or received; what must be shown is that he was required to make such records. See Award 5660.

There is some indication in the record, not completely developed, of possible rules violations as to lineup messages (cf. Awards 5181, 5133, 4919, 4624) or that Claimant may have performed some duties on several days that might entitle him to additional compensation, but these questions are not part of the claim before us. The only issue under consideration is whether or not Carrier improperly reclassified the Agent-Telegrapher position; on the basis of this record, that issue must be resolved in the negative since we cannot validly find that substantial duties of the Agent-Telegrapher position remained to be performed after it was abolished. According, the claim will be denied.

In view of our Findings, it is unnecessary to consider several procedural objections that were raised by Carrier.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June 1961.