

Award No. 10814
Docket No. TE-9638

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Cincinnati, New Orleans & Texas Pacific Railway, that:

1. Carrier improperly declined to increase the rate of pay of the position of Agent at Rockwood, Tennessee as required by Rule 2 of the Agreement.
2. Carrier shall now be required to increase the monthly rate of pay in the amount of \$89.50 due the occupant of the Agent position at Rockwood, effective April 15, 1956.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 19, 1953, there were three positions, around the clock, of telegrapher clerks at Rockwood, Tennessee. With the installation of CTC, the three positions were abolished. This claim is in behalf of the agent, Claude Storey, Jr. Claim was made for the violation of Rule 2(b) which is quoted for your convenience:

"Rule 2

(b) When the duties and responsibilities of an established position are increased, the rate of the position will be subject to change by mutual agreement between the management and the General Chairman."

Since 1953, the station forces, under the direction and supervision of the agent, have remained the same. Agent Storey works Monday through Saturday and has one clerk employed, Thursday through Monday, and one clerk-porter, Monday through Friday.

During this period of time since 1953, the revenues at the station have increased from \$73,000 per month to \$246,339.25 in the month of January, 1957. The position of agent at Rockwood, Tennessee has the smallest monthly salary of the larger stations on the CNO&TP Division, while in point of revenue, duties, and responsibilities, it places second to Cincinnati station on this Division. A new plant called the Roane Electric Furnace Company will be completed in May, 1957 which evidences further increase in the business and duties, and responsibilities of the agent position at Rockwood.

Employees' Exhibits 1 through 13 inclusive, attached hereto, are the correspondence exchanged between the parties in the handling of this claim on the property.

Besides the evidence furnished in the correspondence, the Employees have

OPINION OF BOARD: This is a dispute between The Order of Railroad Telegraphers and The Cincinnati, New Orleans and Texas Pacific Railway Company.

The Claimant, station agent at Rockwood, Tennessee requested an increase in pay. The basis for this request was that the revenue had substantially increased. The Organization contended that the duties and responsibilities were increased and therefore the rate of the position should have been increased by negotiation under Rule 2(b).

"Rule 2(b) When the duties and responsibilities of an established position are increased, the rate of the position will be subject to change by mutual agreement between the management and the General Chairman."

The Organization offered evidence to the Carrier that the duties and responsibilities had increased. They also requested a joint investigation to make a determination. The Carrier offered no evidence as to the alleged increase of duties and responsibilities but categorically denied there was an increase. They also refused to make a joint investigation.

The Carrier refused to negotiate, as provided by Rule 2(b). They implied that before negotiating the instant claim, the Organization would have to negotiate a decrease in rate where duties and responsibilities had declined. There is nothing in the Agreement requiring the Organization to negotiate under such circumstances. Certainly not under Rule 2(b). It is clear and unambiguous. "When the duties and responsibilities increase." There is certainly no contemplation of a decrease in rate because of increased responsibility and duty. The Carrier acted in bad faith when it refused to negotiate.

The Claim is as follows:

1. Carrier improperly declined to increase the rate of pay of the position of Agent at Rockwood, Tennessee as required by Rule 2 of the Agreement.
2. Carrier shall now be required to increase the monthly rate of pay in the amount of \$89.59 due the occupant of the Agent position at Rockwood, effective April 15, 1956.

We cannot sustain the claim in its present form. Many awards have held that we cannot establish the rate for a position unless the Agreement contains a clause providing for rates for a comparable position. We cannot find that the Carrier improperly declined to increase the rate of pay of the position of Agent at Rockwood, Tennessee. We could find that they failed to negotiate as required to by the Agreement. However this is not the claim.

For the foregoing reasons, we believe the Agreement was not violated.

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 28th day of September, 1962.