

Award No. 12139
Docket No. TE-10880

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, that:

1. Carrier violated the agreement between the parties when it failed to adjust the rate of the position of Agent-Operator at Chesterton, Indiana.

2. Carrier shall be required to increase the rate of the position of Agent-Operator, Chesterton, Indiana, in the amount of \$.072 per hour effective February 15, 1957.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Prior to 1953, the Michigan Central Railroad maintained an agency station at Porter, Indiana, which was also the control station for Furnessville, Indiana, on the Michigan Central Railroad. Porter, Indiana on the Michigan Central Railroad was closed and the agency work of Porter and Furnessville was placed under the agency at Willow Creek, Indiana on the Michigan Central Railroad. Effective December 1, 1953, the Porter and Furnessville agency work was moved from Willow Creek and placed under the agency of the New York Central Railroad at Chesterton, Indiana. In August, 1954, a position of clerk at Chesterton was abolished and the work of the position added to the duties and responsibilities of the agent who is now the only employe at the Chesterton agency, thus creating a less favorable condition of employment for the agent at Chesterton.

Article 20(b) of the Agreement between the parties reads:

"The entering of employes in the positions occupied in the service or changing their classification or work shall not operate to estab-

2. The duties and responsibilities of the Agent-Operator at Chesterton were not materially increased.
3. The rate of pay of the claimant can be adjusted only by negotiation by the parties.
4. Claimant's position is now rated in conformity with similar positions.
5. Awards of the Third Division support the Carrier's position.
6. This claim is without merit and should be denied.

OPINION OF BOARD: This claim arose as a result of a request for a pay increase for the Agent-Operator at Chesterton, Indiana. The Local Chairman instituted the request for the increase by letter to the Chief Train Dispatcher dated March 20, 1957. The request was for a 20¢ per hour increase, retroactive to February 15, 1957, in order to bring the rate at this Agency up to rates at similar Agencies in the area. Article 20(c) of the Agreement was cited as authority for the claim. The Dispatcher replied in substance that he was agreeable to \$.072 per hour, but declined any retroactive increase. The Local Chairman then appealed the claim to Superintendent T. E. Reynolds requesting an increase of \$.094 per hour retroactive to February 15, 1957.

May 27, 1957, Superintendent Reynolds replied by letter that he would be agreeable to an increase of \$.072 per hour retroactive to May 1, 1957, and further stated:

"... If this is in agreement with your Organization, please advise so I may handle further with our Management."

On May 27, 1957 the Local Chairman replied that he was agreeable to the rate of \$.072 per hour retroactive to May 1, 1957 as proposed. No reply was received from the Superintendent and the claim was then further processed by the General Chairman and the Assistant General Manager. The latter refusing all wage increases proposed to him on the basis that the position did not warrant any adjustment in rate.

It is the contention of the Organization that the communication by the Superintendent on May 27, 1957, and the acceptance by the Local Chairman on June 1, 1957 resulted in an agreement to establish a rate of pay for the position of \$.072 per hour retroactive to May 1, 1957. Furthermore, these parties at the operational level were better able to determine the equitable rate of pay for the position which was justified by their actions.

The Carrier contended that the claim was not handled on the property in accordance with the Railway Labor Act; the duties of the position had not been increased materially and that rates of pay can only be adjusted by negotiation and not as a grievance.

The question to be resolved is: Had an agreement to adjust the pay rate been arrived at on May 27, 1957 and June 1, 1957 between the Superintendent and the Local Chairman?

If such an agreement had been arrived at the negotiations would have been terminated as required by Article 20(c). An examination of the record

reveals that by letter of October 1, 1957 the General Chairman wrote to the Assistant General Manager as follows:

"This is our appeal from the decision of Superintendent Reynolds dated August 15, 1957 in which he denied claim that under the provisions of Article 20 the position of agent-operator at Chesterton, Indiana, District No. 6, was entitled to an increase rate of pay because of increased duties and responsibilities."

At this time the General Chairman had not considered that the negotiations with the Superintendent had ripened into an agreement. He recognized that the Superintendent had denied the claim.

An examination of the Superintendent's letter of May 27, 1957 reveals a qualified offer not an unqualified one. The Local Chairman was placed on notice that if the offer was satisfactory to him the Superintendent would have to discuss it with his management. This not being an unusual method of negotiating agreements by representative of parties to agreements. The letter also informed the Local Chairman to get his Organization to agree to the offer. The substance of the letter is as follows:

"... If this is in agreement with your Organization, please advise so I may handle further with our Management."

When the Superintendent proceeded to handle the matter with management the claim was denied by management. Thus at this point we are of the opinion that the parties were still negotiating a wage settlement and such negotiations had not resolved themselves into an agreement.

An examination of the claim itself indicates that the parties themselves did not consider the fact that an agreement on the rates had been arrived at between the Superintendent and the Local Chairman. Claim two alleges that the Carrier failed to rate the position at \$.072 per hour effective February 15, 1957. The terms of Claim two were never agreed to by the parties during any phase of the negotiations.

Thus under the Rules of the agreement when the parties terminated their negotiations they are required to proceed under the Railway Labor Act. The claim at that point resolves itself into a request for an increase in pay. Under Article 20(c), the parties are required to negotiate which they did without arriving at an agreement. Thus the proper procedure at this point is to appeal under Sec. 6, of the Railway Labor Act to the Mediation Board rather than this Board, as the rules provide no further remedy.

The opinions expressed in Award 34 and 35 of Special Board of Adjustment No. 259 are distinguishable in that under those facts, written agreements were executed by the Carrier and Organization on the property while in this instance no agreement had been arrived at either orally or in writing.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 is without jurisdiction to adjudicate this dispute as it is not authorized to establish rates of pay.

AWARD

Claim dismissed in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.