

Award No. 12724

Docket No. TE-10060

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

Carrier failed to comply with the rules of the agreement and refused to adjust the rate of pay of the Agent-Telegrapher position at Charleston, Tennessee, by the addition of 27½¢ per hour.

EMPLOYES' STATEMENT OF FACTS: Charleston, Tennessee, which is 41 miles north of Chattanooga, is located on the right of way of this railroad and across the river from Calhoun, Tennessee. For many years this Carrier operated a one man station with an agent-telegrapher position only. In 1952 the Bowater Southern Paper Corporation began to build a fifty million dollar paper mill in the Calhoun-Charleston area. The plant manufactures newsprint from pulp wood cut in the region, and has a potential capacity of 100,000 tons of newsprint a year. With the building of the plant, approximately 2,000 persons were employed. The Southern Railway Company put tracks into the plant site to handle the new source of business for its Charleston agency.

With the increased business brought about by the Bowater plant, the Carrier increased the working force at Charleston to the present time where they now have the positions of agent-telegrapher and second and third shift operators, as well as rest day relief operators. There are also two clerks and two station laborers employed under the jurisdiction of the agent. The yard at Charleston has been increased from a spur track to fifteen miles of yard with round-the-clock switching service. In addition to the normal communication work of sending and receiving messages and copying train orders, the agent at Charleston is required to gather and compile several daily reports concerning equipment and the operation of the agency.

On November 2, 1956, Local Chairman McElhaney made the following claim in his letter to Superintendent D. D. Strench:

"THE ORDER OF RAILROAD TELEGRAPHERS

**R.F.D. 4, Box 354
Athens, Tennessee
November 2, 1956**

In Third Division Award 5131, Referee Coffey, it was held:

"While this Board has the authority to construe and enforce agreements, and in connection therewith to apply rules requiring 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."

In Third Division Award 6803, Referee Robertson, it was held:

"Rule 2 (c) of the applicable Agreement provides that positions (not employees) 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."

In Third Division Award 7440, Referee Shugrue, it was held:

"This Board has no inherent authority to fix rates of pay. It is bound by the Agreement as the parties have written it. There being no rule to support the claim, it must be denied. See Award 6803."

In Third Division Award 7445, Referee Shugrue, it was held:

"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."

Thus, under the specific language of the Agreement here in evidence, if any change is to be made in the rate of the position of agent-telegrapher at Charleston, Tennessee, it will have to be made by mutual agreement between the management and the General Chairman because the Board does not have authority to grant the increase here demanded. Then, too, as evidenced by the above awards, it has heretofore recognized that it is without jurisdiction to grant such demands. In these circumstances, the Board is left with no alternative except to dismiss the claim which the ORT here attempts to assert for want of jurisdiction.

OPINION OF BOARD: Based upon what appears to have been a substantial increase in the volume of business at Charleston, Tennessee, the Organization initiated a request that the Carrier increase the hourly rate of the Agent-Telegrapher position there by an additional 27½ cents because of an alleged increase in the duties of that job. The request was declined, but the Superintendent stated he would like to discuss with the Local Chairman a reduction in agency rates at other places where the work of those agencies had diminished. The Local Chairman rejected this offer and the claim was progressed to a final denial.

The Organization cites and relies upon Rule 2 (b) of the Agreement. Rule 2, in its entirety, reads as follows:

"RULE 2. CLASSIFICATION

(a) The management will not change classification or work for the purpose of reducing rates. If a position is reclassified, the occupant may elect to remain or exercise seniority. When the rate of pay of a position is reduced by agreement, the management and the General Chairman will determine whether or not the occupant may elect to remain or exercise seniority.

(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 meaning of this rule language is clear. Under the conditions specified, rates of pay may be reduced or changed only by agreement between the Carrier management and the Organization's General Chairman. That this Board may not properly require the parties to agree on a bargainable issue, and that we are without authority to increase, decrease, or fix rates of pay in the absence of contractual provisions setting out standards or criteria for so doing is well established. (Cf. Awards 3224, 2734, 3224, 7093, 9508, 10814; Awards 3994, 4187, 4686, 5094, 10620). The sound principle enunciated by these precedential authorities is that the Board has no power or authority under the Railway Labor Act to negotiate rules or agreements; that unless the parties themselves have agreed upon a viable rule or agreement, the Board may not properly write one for them.

Here the controlling rule is specific and unambiguous. It calls for negotiation and agreement. It does not require the Carrier to grant the increase sought: it merely provides that a change in the rate of pay of the position will be negotiated and agreed upon by the specified parties upon a showing of increased duties and responsibilities attaching thereto.

Accordingly, the Board finds no rule support for this claim. It will, therefore, 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 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 14th day of July 1964.