

**Award No. 13721**

**Docket No. TE-12675**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Benjamin H. Wolf, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION  
(Formerly The Order of Railroad Telegraphers)**

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Western Pacific Railroad, that:

1. The Carrier violated the terms of an Agreement between the parties hereto when on January 8, 1960, it required and permitted Clerk Cervetti, an employe not covered by the Telegraphers' Agreement at South Sacramento, California to transmit a message of record in the form of a train report over the telephone to the train dispatcher.

2. The Carrier shall, because of the violation set forth in item 1 of this statement of claim compensate E. P. Murphy, regularly assigned Telegrapher-Printer-Operator South Sacramento, available to perform the work a call of two (2) hours at the time and one-half rate.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement by and between the parties to this dispute effective June 16, 1940, revised January 1, 1953 and as otherwise amended.

At page 36 of said Agreement is listed the positions existing at South Sacramento, California on the effective date of said Agreement. This listing reads:

LOCATION	CLASSIFICATION	HOURLY RATE
South Sacramento	"JY" Telegrapher-Printer-Operator	\$1.70½

At a time not divulged by the records the Carrier rearranged its service at South Sacramento whereby communication service was no longer provided between 5:00 P. M. and 9:00 P. M.

E. P. Murphy, herein after referred to as Claimant, is the regularly assigned occupant of the second shift Telegrapher-Printer-Operators' position at South Sacramento, with assigned hours 9:00 P. M. to 5:00 A. M.

hardly a modification of the mandatory requirements of Section 2 Second but a means of compelling its realization.

Award 10950 reviews the awards favoring the Employees' point of view and sides with them. It, too, misreads the implications of Section 2 Sixth. It places the burden on the Carrier to request a conference to cure the defect arising out of the Petitioner's failure to take a necessary step towards a resolution of the dispute before coming to this Board. This, as we have just demonstrated, was incorrect.

In our controversy, the basic point seems to have been overlooked. It was decided by Congress that "all disputes—shall be considered, and, if possible, decided,—in conference—." The words are mandatory, not optional. All the contrary minded awards have glossed over the plain, unadorned simplicity of the Congressional mandate.

**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 does not have jurisdiction over the dispute involved herein.

#### AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1965.