

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Claude S. Woody, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)****ILLINOIS CENTRAL RAILROAD**

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

CLAIM NO. 1

1. Carrier violates the terms of an agreement between the parties hereto when it unilaterally changed the monthly rate of pay on the Agent-Operator's position at Metropolis, Illinois, to an hourly rate (\$2.62) and reduced the service on said position from six (6) to five (5) days per week.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate V. T. Johnston, Agent-Operator, Metropolis, Illinois, a day's pay (8 hours) for each week commencing October 1, 1961, until such time as the monthly rate and the hours comprehended by such rate are restored to the position.

CLAIM NO. 2

1. Carrier violates the terms of an agreement between the parties hereto when it unilaterally changed the monthly rate of pay on the Agent-Operator's position at Murphysboro, Illinois, to an hourly rate (\$2.72) and reduced the service on said position from six (6) to five (5) days per week.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate T. H. Parnell, Agent-Operator, Murphysboro, Illinois, a day's pay (8 hours) for each week commencing October 1, 1961 until such time as the monthly rate and the hours comprehended by such rate are restored to the position.

CLAIM NO. 3

1. Carrier violates the terms of an agreement between the parties hereto when it unilaterally changed the monthly rate of pay on the

Agent-Operator's position at Marion, Illinois to an hourly rate (\$2.74) and reduced the service on said position from six (6) to five (5) days per week.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate C. R. Triplett, Agent-Operator, Marion, Illinois, a day's pay (8 hours) for each week commencing October 1, 1961 until such time as the monthly rate and the hours comprehended by such rate are restored to the position.

CLAIM NO. 4

1. Carrier violates the terms of an agreement between the parties hereto when it unilaterally changed the monthly rate of pay on the Agent-Operator's position at Mounds, Illinois, to an hourly rate (\$2.55) and reduced the service on said position from six (6) to five (5) days per week.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate B. Dubois, Agent-Operator, Mounds, Illinois, a day's pay (8 hours) for each week commencing October 1, 1961, until such time as the monthly rate and the hours comprehended by such rate are restored to the position.

CLAIM NO. 5

1. Carrier violates the terms of an agreement between the parties hereto when it unilaterally changed the monthly rate of pay in the Agent-Operator's position at Collins, Mississippi to an hourly rate (\$2.64) and reduced the service on said position from six (6) to five (5) days per week.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate J. B. Morris, Sr., Agent-Operator, Collins, Mississippi, a day's pay (8 hours) for each week commencing November 1, 1961, until such time as the monthly rate and the hours comprehended by such rate are restored to the position.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective June 1, 1951, revised December 1, 1956, and as otherwise amended.

There are, as the statement of claim indicates, five disputes which were handled separately on the property, that have been incorporated into this appeal. The reason for this being that all of the disputes have common aspects, viz., the subject matter of the violation is the same; the rules involved are the same; and the question at issue in each of the disputes is the same. Therefore, the Employees have, in the interest of eliminating repetitious arguments and handling and to expedite the adjudication of these disputes, combined them into this one submission. In this connection, however, it may be noted that each of the disputes retained their separate statement of claim, statement of facts, only the Employees' position becomes a common denominator.

The five monthly-rated agencies involved are listed in the wage appendix of the parties' Agreement, at pages 120, 121 and 134. For your Board's ready reference, we hereinafter set forth these listings:

"When new positions are created, compensation shall be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

The Order of Railroad Telegraphers contend that the Illinois Central Railroad violated the agreement between the parties — effective June 1, 1951, as amended — when it effected the aforementioned changes. The carrier denies the contention.

Carrier's Exhibits A through N are copies of pertinent correspondence exchanged between the parties relative to the subject matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims raise the issue whether the Carrier is authorized, within the purview of its agreement with the Organization, to unilaterally convert monthly Rated Employees to an hourly rate basis, and, additionally reduce the service on the positions of such employees from six (6) to five (5) days per week.

The claims are based on Rule 5, paragraph D; and Rule 20, Section 3.

Carrier contends and argues that it is authorized to convert employees from monthly rates to hourly rates, that reduction of the service on the positions in question was a separate and distinct act not related to a change of rate, and that carrier did not in fact effect a rate change.

Exemplary of all five claims at issue, is Claim No. 1. Here Carrier changed the monthly rate of pay on the Agent-Operator's position at Metropolis, Illinois, to an hourly rate of \$2.62, arrived at by dividing the monthly rate (\$552.14) by the hourly factor of 211 (Rule 20, Section 3, paragraphs E and F). Concurrently, carrier reduced service on the position by one (1) day per week. The result of Carrier's action, which was put into effect on October 1, 1961, was to reduce the service on the position from 208 and two-third hours per month (the hourly factor of 211 contains an overtime factor) to 169 and one-third hours per month. The Agent-Operator at Metropolis, thereafter realized a wage loss of one (1) day of pay (8 hours) each week or a wage loss of \$108.49 per month (\$552.14 minus \$443.65, the latter being the new hourly rate (\$2.62) for 169 and one-third hours per month).

In Award 10955 (Dolnick), this Board held:

"Wage rates whether monthly or hourly that are not changed by agreement as provided for in Rule 2(d) may only be modified in proceedings under the Railway Labor Act."

The rule above cited is the equivalent of Rule 5, paragraph 8 referred to in the instant case.

In Award 10431 (Miller) this Board held:

"... one of the men 'moved back' was a monthly rated employee. His minimum salary was in the contract negotiated amount of \$417.29 per month; his regular rest day was Sunday; and he could be worked on Saturday without additional pay. On the other hand, he was entitled

to \$417.29 per month whether he worked on Saturday or not, e.g., a year could elapse without his performing any work on any Saturday and his monthly rate of pay would not be reduced.

In this Claim, when the monthly rated employe was moved back, he did not retain his minimum monthly rate of pay of \$417.29 but, in lieu of it, was paid under a formula derived at by dividing the monthly rate by 208 and two-third hours . . . , and then calculating payment in reference to a five day work week. This resulted in a loss to grievant of over \$50.00 per month."

The Board then found that the foregoing action by the Carrier violated the agreement there involved which provided that men moved back on tricks were to retain their rates of pay.

The pertinence of the above award lies in the fact that the agreement involved in that case contained a provision substantially identical to Rule 20, Section 3, paragraph B, which, contemplating the conversion from monthly Rates to hourly rates, provides:

"Such employes shall be assigned one (1) regular rest day per week, Sunday, if possible . . . Such employes may be used on the sixth day of the work week to the extent needed without additional compensation. If not worked on the sixth day or if worked less than a full day on such sixth day, there shall be no reduction in compensation."

In the case here at issue, there would be no consistency in Carrier's agreeing to pay converted Monthly Rated Employes for the sixth day, regardless of whether or not called for work, and on the other hand unilaterally reducing service on the position involved in order to obviate such payment. Rule 20, Section 3, paragraph B would be meaningless and in fact redundant under such an interpretation of that rule.

The record does not reflect a material change in the status of the position involved and, therefore, reduction of the position from six (6) days to five (5) days was not justified to meet service requirements. (See Award 13913.)

Carrier did violate Rule 5, paragraph D, by unilaterally changing the rate of pay on each agent-operator's position referred to in each of the claims in the instant case.

The claims are sustained and compensation shall be computed on the basis of the monthly rate for each position involved less the amount paid each agent-operator so that each of the agent-operators be made whole for any loss of wages suffered.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Claims are sustained.

AWARD

Claims sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.