Award No. 17263
Docket No. TE-16641

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Pacific Railroad (South Central and Northwestern Districts), that:

1. Carrier violated and continues to violate the terms of an agreement between the parties hereto when effective at the close of business on September 14, 1965, it discontinued the 1st shift telegrapher-clerk position at Brigham City, Utah, without in fact abolishing the work thereof, and assigned and transferred the work of said position to a Rule 2—Monthly rated agent's position, without agreement between the General Manager and the General Chairman.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate the following named extra employees, or in the absence of such, the following named regularly assigned employees idle on their rest day or days who were available and could have been called to protect the telegrapher-clerk position at Brigham City, Utah, commencing September 15, 1965 and for each work day of the purportedly abolished position thereafter so long as the violation complained of continues; as hereinafter shown:

Sept. 15, 1965. 8 hours 2.8128 per hour in favor of Extra telegrapher S. A. Selley, who was available and could have been called to protect the Position.

Sept. 16 and 17 rest days.
Sept. 18, 1965. 8 hours @ 2.8128 per hour in favor of R. R. Gaines, extra telegrapher, who was available and could have been called to protect the Position.

Sept. 19, 1965. 8 hours 2.8128 per hour in favor of Earl Harmon, second telegrapher-clerk Brigham, who had a rest day falling on Sept. 19, 1965. No extra operator available on that date.

Sept. 20, 1965. 8 hours @ 2.8128 per hour in favor of Extra Telegrapher S. A. Shelley, who was available and could have been called to protect the Position.

Sept. 21, 1965. 8 hours @ 2.8128 per hour in favor of Extra Telegrapher S. A. Shelley, who was available and could have been called to protect the Position.

Sept. 22, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher S. A. Shelley, who was available and could have been called to protect the Position.

Sept. 23 and 24 rest days.

Sept. 25, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher N. J. Hildebrand, who was available and could have been called to protect the Position.

Sept. 26, 1965. 8 hours @2.8128 per hour in favor of Extra telegrapher N. F. Hildebrand, who was available and could have been called to protect the position.

Sept. 27, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher N. F. Hildebrand, who was available and could have been called to protect the position.

Sept. 28, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher A. H. Johnson, who was available and could have been called to protect the position

Sept. 29, 1965. 8 hours @2.8128 per hour in favor of Extra telegrapher A. H. Johnson, who was available and could have been called to protect the position.

Sept. 16, 1965. 8 hours @2.8128 per hour in favor of Extra telegrapher S. A. Selley, who was available and could have been called to protect the position

Sept. 17, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher S. A. Selley, who was available and could have been called to protect position.

Sept. 23, 1965. 8 hours @ 2.8128 per hour in favor of L. J. Creger, Relief telegrapher at Cache Jct. Utah who had a rest day falling on Thursday Sept. 23, 1965.

Sept. 24, 1965. 8 hours @ 2.1828 per hour in favor of C. C. Ross, Third telegrapher at Cache Jct. Utah who had a rest day falling on Friday, Sept. 24, 1965.

Sept. 30, 1965. 8 hours @ 2.8128 per hour in favor of A. H. Johnson, Extra telegrapher, who was available and could have been called to protect the position.

Oct. 1, 1965. 8 hours @ 2.8128 per hour in favor of A. H. Johnson, Extra telegrapher, who was available and could have been called to protect the position.

Oct. 2, 1965. 8 hours @ 2.8128 per hour in favor of Extra Telegrapher A. H. Johnson, who was available and could have been called to protect the position.

Oct. 3, 1965. 8 hours @ 2.8128 per hour in favor of Extra telegrapher S. A. Selley, who was available and could have been called to protect the position.

Oct. 4, 1965. 8 hours @ 2.8128 per hour in favor of Earl Harmon, second telegrapher clerk Brigham City who had a rest day falling on Monday Oct. 4, 1965.

Oct. 5, 1965. 8 hours 2.8128 per hour in favor of E. W. Harmon, Relief Opr. Brigham-North Yard Relief, who had a rest day falling on Tuesday Oct. 5, 1965.

Oct. 6, 1965. 8 hours @ 2.8128 per hour in favor of E. W. Harmon, Relief Opr. Brigham-North Yard Relief, who had a rest day falling on Wednesday, Oct. 6, 1965.

Oct. 7, 1965. 8 hours @ 2.8128 per hour in favor of L. J. Creger, Relief telegrapher at Cache Jct. Utah, who had a rest day falling on Thursday, Oct. 7, 1965.

Oct. 8, 1965. 8 hours @ 2.8128 per hour in favor of C. C. Ross, 3rd telegrapher clerk at Cache Jct. Utah who had a rest day falling on Friday, Oct. 8, 1965.

Oct. 9, 1965. 8 hours @ 2.8128 per hour in favor of G. E. Stuart, first telegrapher clerk, Cache Jct. Utah who had a rest day falling on Saturday Oct. 9, 1965.

Oct. 10, 1965. 8 hours @ 2.8128 per hour in favor of G. E. Stuart, first telegrapher clerk, Cache Jct. Utah who had a rest day falling on Sunday, Oct. 10, 1965.

Oct. 11, 1965. 8 hours @ 2.8128 per hour in favor of Earl Harmon, second telegrapher clerk Brigham City who had a rest day falling on Monday Oct. 11, 1965.

Oct. 12, 1965. 8 hours @ 2.8128 per hour in favor of E. W. Harmon, Relief telegrapher Brigham North Yard relief who had a rest day falling on Tuesday Oct. 12, 1965.

Oct. 13, 1965. 8 hours @ 2.8128 per hour in favor of E. W. Harmon, Relief telegrapher Brigham North Yard relief who had a rest day falling on Wednesday, Oct. 13, 1965.

Oct. 14, 1965. 8 hours @ 2.8128 per hour in favor of L. J. Creger, Relief telegrapher at Cache Jct. Utah who had a rest day falling on Thursday, Oct. 14, 1965.

Oct. 15, 1954. 8 hours @ 2.8128 per hour in favor of R. R. Gaines, extra telegrapher who was available and could have been called to protect the position.

Oct. 16, 1965. 8 hours @ 2.8128 per hour in favor of R. R. Gaines, extra telegrapher who was available and could have been called to protect the position.

Oct. 17, 1965. 8 hours @ 2.8128 per hour in favor of R. R. Gaines, extra telegrapher who was available and could have been called to protect the position.

Oct. 18, 1965. 8 hours @ 2.8128 per hour in favor of R. R. Gaines, extra telegrapher who was available and could have been called to protect the position.

Oct. 19, 1965. 8 hours @ 2.8128 per hour in favor of E. W. Harmon, Brigham-North Yard Relief telegrapher who had a rest day falling on Tuesday, Oct. 19, 1965.

Oct. 20, 1965. 8 hours @ 2.8128 per hour in favor of E. W. Harmon, Brigham-North Yard Relief telegrapher who had a rest day falling on Wednesday, Oct. 20, 1965.

Oct. 21, 1965. 8 hours @ 2.8128 per hour in favor of L. J. Creger, Relief Telegrapher at Cache Jct. Utah, who had a rest day falling on Thursday, Oct. 21, 1965.

Oct. 22, 1965. 8 hours @ 2.8128 per hour in favor of C. C. Ross, Third telegrapher at Cache Jct. Utah who had a rest day falling on Friday, Oct. 22, 1965.

Oct. 23, 1965. 8 hours @ 2.8128 per hour in favor of G. E. Stuart, First Telegrapher at Cache Jct. Utah who had a rest day falling on Saturday, Oct. 23, 1965.

Oct. 24, 1965. 8 hours @ 2.8128 per hour in favor of G. E. Stuart, First Telegrapher at Cache Jct. Utah who had a rest day falling on Sunday, Oct. 24, 1965.

Oct. 25, 1965. 8 hours @ 2.8128 per hour in favor of Earl Harmon, Second Telegrapher at Brigham City Utah who had a rest day falling on Monday, Oct. 25, 1965.

EMPLOYES' STATEMENT OF FACTS: An agreement between the Union Pacific Railroad Company (South Central and Northwestern Districts), hereinafter referred to as Carrier, and its employees in the classes shown therein, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective October 1, 1959, and as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At page 1 of said Agreement, under Rule 2—Monthly Rated Positions (an all service rendered rate) is listed an agent's position for Brigham, Utah. For ready reference the listing reads:

"Home Seniority Dist.—2, Location—Brigham, Position—Agent, Rate per Month—$548.34."

At page 6 of said Agreement, under Rule 3—Hourly Rated Positions, is listed the positions within this classification existing at Brigham, Utah, on the effective date of said Agreement. This listing appears as follows:

assigned telegrapher. In reference to claims submitted on behalf of regularly assigned telegraphers, most of them were working at other stations. Claims on behalf of the second trick telegrapher at Brigham were limited to the rest days of that position. This is also true in reference to claims from regularly assigned telegraphers at other stations.

A copy of three letters written by the local chairman, dated September 30, 1965, October 4, 1965, and October 25, 1965, and addressed to the Carrier's Supervisor of Wage Schedules, are attached marked Carrier's Exhibits A-1, A-2 and A-3, respectively. Copy of letters of denial by the Carrier's Supervisor of Wage Schedules, dated November 12, 15 and 17, 1965, are attached marked Carrier's Exhibits B-1, B-2 and B-3, respectively.

On December 6, 1965, the General Chairman appealed the claim to the Carrier's Assistant to Vice President in three separate letters of that date, copies of which are attached marked Carrier's Exhibits C-1, C-2 and C-3, respectively. The Carrier's Assistant to Vice President denied the claims in two letters dated December 14, 1965, and one letter dated December 16, 1965, copies of which are attached marked Carrier's Exhibits D-1, D-2 and D-3, respectively.

The Carrier's decisions as set forth in its letter of December 14 and 16, 1965, were rejected by the Organization in a letter dated January 12, 1966, a copy of which is attached marked Carrier's Exhibit E.

In reference to Rule 2, incumbents of positions classified as "agent" under that rule at the following stations perform whatever telegraphing work there is to be performed at the named station during their day's work:

North Salt Lake
Cedar City
Logan
Long Beach

No telegraphers are now employed at these stations and whatever telegraphing needs be done, including the handling of train orders, is performed by the incumbent of the position classified as "agent."

(Exhibits not reproduced)

OPINION OF BOARD: The claim alleges that the Carrier violated the Agreement when, effective at the close of Business on September 14, 1965, it discontinued the first shift telegrapher-clerk position at Brigham, Utah, without in fact abolishing the work thereof, and assigned and transferred the work of said position to a Rule 2—Monthly rated agent's position, without agreement between the General Manager and the General Chairman.

The Carrier states that prior to September 14, 1965, the force at Brigham consisted of a monthly rated agent and two telegrapher-clerks, with one of the telegrapher-clerks assigned to the first shift and the other to the second shift. On September 14, 1965, the first shift telegrapher-clerk position was discontinued, which resulted in the agent being the only employe on duty during the hours of the first shift and he has performed what station work remained to be performed on that shift, including the handling of train orders. The Carrier states that no change was made in the classification of the agent position at Brigham on or after September 14, 1965.

The Petitioner contends that the assignment of the work formerly performed by the first shift telegrapher-clerk to the monthly rated agent's

position constituted a reclassification of the latter position to that of agent-telegrapher without negotiation and agreement as required by Rule 7, and the interpretation that it contends has been placed thereon by the parties over the years.

Rule 2 reads in part:

"RULE 2—MONTHLY RATED POSITIONS. (a) The monthly rates specified for the positions listed below will cover all services rendered during a calendar month, except as provided in Section (c) of this rule.

"Home Seniority Dist.—2; Location—Brigham; Position—Agent; Rate Per Month—$548.34

* * * * *

"(b) Rules of this agreement covering assigned week day, rest day and holiday service, overtime and calls, will not apply to above listed positions, except as provided in Section (c) of this rule.

"(c) The number of hours comprehended in the rate for monthly rated positions included in this rule is 211 hours per month. Such employes shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to hourly rated employes covered by this agreement shall apply to service on such assigned rest day. 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. Service on other than the assigned rest day shall be compensated for under the rules applicable to these positions prior to September 1, 1949.

"To determine the straight time hourly rate, divide the monthly rate by 211 hours. To determine the daily rate, multiply the straight time hourly rate by eight.

"So long as the monthly rates remain in effect on this basis future adjustments thereof will be on basis of 211 hours.

"(d) Milk and cream commissions will not be paid to monthly rated agents listed in this rule.

"(e) Monthly rated positions included in this rule classified as agent-telegrapher will be bulletined and assigned in accordance with the bulletin and assignment rules. All other monthly rated positions included in this rule will be bulletined and applications considered on basis of qualifications. Applicants must be approved by the general manager and Traffic Department. Where qualifications are sufficient seniority will govern."

Rule 7 reads:

"RULE 7.—CHANGES IN POSITIONS AND RATES OF PAY. Positions (not employes) shall be rated. Changes in classification of position or rates of pay will be made only by agreement between the general manager and general chairman."

In connection with the practice as alleged by the Petitioner concerning Rule 7, the Carrier does not deny that from time to time, over the years, agreements have been made with the Organization to change the classification of agent under Rule 2 to agent-telegrapher, but contends that such agreements did not, however, constitute any recognition by the Carrier, nor any understanding with the Organization, that agents under Rule 2 were to be relieved of or prohibited from performing telegraphing functions. The Carrier has cited a number of instances where, through the years, monthly rated agents have performed whatever telegraphing needs to be done, including the handling of train orders at their stations.

Awards 7359 of this Division involved the same Petitioner as herein and the Eastern District of the same Carrier, a similar factual situation, and rules practically identical to Rules 2 and 7 of the Agreement here involved. In that Award it was held:

> "Prior to January 13, 1953, Carrier had at Concordia, Kansas, two employes classified as follows:
>
> "**Agent,** monthly rated (Rule 2) no assigned hours, work days Monday through Saturday, Rest days: Sunday.
>
> "**Telegrapher-Clerk,** hourly rated (Rule 3), 8 A.M. to 5 P.M. (one hour for lunch) Monday through Friday, Rest days: Saturday and Sunday.
>
> "On January 7, 1953, Carrier's Assistant Superintendent, H. P. Jopling, in Kansas City issued the following order to Agent W. F. Jacobs at Concordia:
>
> > 'Arrange abolish position telegrapher-clerk, Concordia, giving usual 5 days notice taking position off at close of shift Monday, Jan. 12th. Acknowledge. D-242.'
>
> "This Order was complied with and beginning January 13, 1953, the Agent was required to perform such duties as had previously been performed by the telegrapher-clerk. The Organization is pressing this claim, contending that Carrier's action was in violation of Rule 7 of the parties' Agreement of February 1, 1951, which is as follows:
>
> > '**Rule 7. Changes in Positions and Rates of Pay.** Positions (not employes), shall be rated. Changes in classification of positions or rates of pay will be made only by agreement between the General Manager and General Chairman.'
>
> "We do not agree that there was either a change of classification or a change in rate of pay. Therefore, there has been no violation of Rule 7. The Carrier simply abolished a position which it decided was no longer needed. This in no way conflicts with the restrictions of Rule 7.
>
> "Agents were assigned to be in charge of such local offices. These monthly rated agents, covered by Rule 2, are not prohibited the use of telegraphic equipment as are those hourly rated agents in the small stations covered by Rule 4 of the parties' Agreement. The

agent at Concordia, Kansas was and is required at time to perform telegraphic service. The record shows that this was done before as well as after the termination of the position of Telegrapher-Clerk. This Agent is covered by the Telegraphers' Agreement with the Carrier and his duties are not specifically restricted to exclude work which may have been performed by the Telegrapher-Clerk.

"The language of Rule 7 does not say that the Carrier cannot abolish a position without agreement between the General Manager and the General Chairman. It only provides that **rates of pay and changes of classification** must be agreed upon. To sustain the claim now before us would, in effect, put us in the position of denying the Carrier the right to abolish jobs found to be uneconomical to operate. We do not think that such was the intent of the parties when they adopted Rule 7.

"We find no basis upon which to sustain this claim." (Emphasis theirs.)

Award 7359 is controlling herein, and the claim will be denied.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.