



**Award No. 18782**

**Docket No. TE-19031**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur W. Devine, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Missouri-Kansas-Texas Railroad Company, T-C 5769, that:

1. Carrier violated the provisions of the Telegraphers' Agreement by failing to properly compensate the incumbent of the Missouri-Kansas-Texas Relief assignment at Waxahachie, Texas, four days per week, i.e., Mondays, Tuesdays, Fridays and Saturdays, by only allowing such incumbent a lower hourly rate than what the two Joint Texas Division (B&RI) positions carry during the other work days of the work week.

2. Carrier shall, effective June 5, 1969, allow the incumbent of the Missouri-Kansas-Texas Relief assignment, Mrs. E. R. Windham, or her successor(s), the proper hourly rate, on a continuing basis, of the two B&RI telegrapher positions at Waxahachie, Texas, for each Monday, Tuesday, Friday and Saturday that the incumbent of the MK&T Relief position was allowed a lower hourly rate than what the two B&RI positions carried during their five day work week.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

This dispute is predicated upon various provisions of an Agreement between the Missouri-Kansas-Texas Railroad Company (MKT) and the T-C Division, BRAC, dated September 1, 1949, as amended and supplemented, and more specifically upon the provisions of the Memorandum of Agreement dated January 25, 1966, in particular, Section 3(a) thereof, all of which are by this reference made a part hereof. The dispute was handled in the usual manner on the property, up to and including the highest officer of the Carrier designated to handle claims and grievances, including conference January 19, 1970, and denied.

This dispute arose because Carrier refused to compensate claimant working the relief position and not Rule 26(e) of the regular agreement.

Employes contend there is nothing stated in the Memorandum Agreement to deprive the relief position from receiving the same rate of pay as the

Attached hereto and made a part hereof, is copy of revised rate sheets and related exhibits referred to herein as Carrier's Exhibit "C."

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record in the dispute is voluminous, but the facts appear to be fairly well set out. Pursuant to the provisions of the Washington Job Protection Agreement of May, 1936, the respondent Carrier and the Joint Texas Division of Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company negotiated an agreement with their telegraph service employees to provide for the co-ordination of the two carriers' separate facilities at Waxahachie, Texas. The resulting Memorandum of Agreement of January 25, 1966, has been made a part of the record. Sections 3(a) and 3(d) of the Memorandum of Agreement reads:

"(a) The forces to be assigned to the joint agency will be an Agent-Telegrapher at a monthly rate of \$656.00, six days per week; one Cashier-Telegrapher at a rate of \$2.8703 per hour and one Telegrapher-Clerk at a rate of \$2.7828 per hour, five days per week, and a Relief Telegrapher to relieve the Agent-Telegrapher one day per week and Cashier-Telegrapher and Telegrapher-Clerk two days each per week. The two positions of Agent-Telegrapher and Relief Telegrapher will be filled by Missouri-Kansas-Texas Railroad Company employees and the positions of Cashier-Telegrapher and Telegrapher-Clerk will be filled by Joint Texas Division employees. Vacation and other temporary work on these positions will be filled by extra men from the roster of the railroad whose employees are regularly assigned to these positions."

\* \* \* \* \*

"(d) Employees assigned to the joint agency will continue their present seniority and other rights under their agreement and will not acquire such rights under the agreement of the other party."

The first sentence of Rule 26, Section 1(e) of the schedule agreement between the respondent carrier and its telegraphers reads:

"The regular relief positions created under this paragraph (e) shall be bulletined and shall be paid the rates applicable to the position on which relief service is performed . . ."

Through a number of general wage increases the relief telegrapher has been paid the rate of the position on which he performed relief service. Then in connection with the application of the "Classification and Evaluation Fund" provided for by the National Agreement of June 24, 1968, the Joint Texas Division increased the rates applicable to positions filled on regular work days by its employees at Waxahachie. The respondent carrier, however, did not apply the rates of these positions on the days they were filled by the Relief Telegrapher.

In the opinion of the Board, the record does not support the position of the Carrier that the claim was not filed in accordance with the provisions of Article V of the National Agreement of August 21, 1954. The claim is clearly a continuing claim which may be filed at any time under the "continuing violation" provision of Article V.

It is well settled by prior awards of this Board that under rules such as Rule 26, Section 1(e), heretofore quoted, regular relief employees are entitled to the same rate as that applicable to the position on which the relief service is performed. See Awards 5722, 11981, 12088, 12634, 13090 and 13325. We find nothing in the Memorandum of Agreement of January 25, 1966, which releases the Carrier from its obligation to comply with the provisions of Rule 26, Section 1(e), which is clear and precise in providing that "The regular relief positions created under paragraph (e) shall be paid the rates applicable to the position on which relief service is performed." The Carrier goes to great length in pointing out how the rates of the regular positions were arrived at, and that the rates thereon should not have been changed without its concurrence, etc., but this does not relieve the Carrier of its clear responsibility under Rule 26, Section 1(e). Accordingly, the claim will be sustained.

**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 has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.

#### CARRIER MEMBERS' DISSENT TO AWARD 18782, DOCKET TE-19031 (Referee Devine)

We respectfully submit that as to the merits of the claim the Majority have not come to grips with the controlling question. As was pointed out at page six of the memorandum which Carrier Members gave the Referee in this case, Carrier's defense to the claim has consistently been that: "the rates of pay for the three positions involved were stipulated in that agreement (a multi-party agreement to which respondent carrier and FWD and employees of both carriers were parties) . . . the rate being paid the Relief Telegrapher is the agreed rate, regardless of any unilateral application of a portion of the Classification and Evaluation Fund by the Fort Worth and Denver Railway Company (Emphasis ours.) This did not change their rate of pay nor change the agreement in any manner . . ."