

Award No. 52  
Docket No. 52

MOP File 380-1426  
ORT File 1115-53

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS  
and  
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

- (a) The Carrier violated the provisions of the agreement between the parties by failing to maintain the higher rates in the office when the force was reduced at Dermott, Arkansas, May 11, 1953.
- (b) The Carrier now be required to properly adjust the rate of the second-trick operator at Dermott by an increase of one and one-half cents per hour retroactive to May 11, 1953.

OPINION OF BOARD: The Organization here asserts that the respondent here violated Rule 13(b) of the effective agreement, which reads as follows:

"In reducing the force at any office the lowest rate in that office will be abolished and the youngest employe in point of district seniority employed therein will be displaced."

when it failed to maintain the higher rates in the office when the force was reduced at Dermott, Arkansas, on May 11, 1953. The Organization pointed out that, prior to that date, there were four positions at this location, said positions being listed and rated herein below:

Agent	Rated	\$1.935 per hour
Telegrapher-Cashier	"	1.85 " "
Telegrapher	"	1.835 " "
Telegrapher	"	1.835 " "

and that when, on May 11, 1953, the position of Telegrapher-Cashier was abolished, the respondent left undisturbed a rate of \$1.935 per hour for the position of Agent, with a rate of \$1.835 per hour for both the second and third trick telegrapher positions when it should have provided a rate of \$1.85 hourly for the said second trick telegrapher position within the meaning of the above quoted rule since the rate of \$1.835 per hour was the lowest rate in the office when the position was abolished.

The Organization took the position that Rule 13(b) was, in itself, clear and without ambiguity and that the same had been in the effective agreement for more than 40 years without the respondent ever attempting to place an interpretation and application thereon as it has here contended.

The Organization requested that the respondent be directed to establish a rate of \$1.85 hourly for the second trick operator and make such increase (amounting to  $1\frac{1}{2}\phi$  per hour) retroactive to the date that this rate was abandoned.

The respondent took the position that Rule 13(b), which covers reductions in force in an office, should not properly be interpreted as the Organization here seeks in that that phrase "the lowest rate in that office", as contained in the said rule, properly means the lowest rate in effect in the office on that shift.

The respondent pointed out that it was not of the opinion that the second and third shifts should be considered "in that office" when a reduction of force is made on the first shift which required the increasing of a rate for a position on another shift when there was no material change in the duties or the assignment of those assigned to such other shifts which could justify an increase in the rate of pay therefor.

It was pointed out that, if the Organization's request were granted here, a  $1\frac{1}{2}\phi$  hourly increase would be granted to the occupant of the second shift on an arbitrary basis when the rates of pay for the second and third shifts are, and should properly remain the same, since to do otherwise would destroy the historical differential between the various positions here, for which reason the claims here presented should be denied.

Rule 13(b), as quoted above, is not susceptible to but one construction or interpretation, that is, when forces are reduced at any office, the lowest rate then prevailing at that office will be abolished and that the youngest employe in point of district seniority, employed at that office, will be displaced.

The parties are in agreement that a position was abolished. No contention is made that the employe youngest in district seniority remained after the abolishment. It is likewise evident that when the position of telegrapher-cashier was abolished on May 11, 1953, the second and third trick telegraphers continued to receive an hourly rate of \$1.835 just as they had prior to the abolishment of the position; thus, it is clearly evident that the lowest rate in the office was not abolished when the forces were reduced as contemplated by Rule 13(b).

The effective agreement was not complied with and this claim is meritorious.

It is the opinion of the Board, and the Board so finds and holds, that the Carrier should now be required to re-establish the rate of \$1.85 here properly applicable to the positions of telegraphers in lieu of the lower rate of \$1.835 per hour. The Board is of the further opinion, and so finds and holds, that it cannot properly find from the facts of record here that the increase of  $1\frac{1}{2}\phi$  thus directed to be added to the position of telegrapher should be used (as the Organization requests) to adjust the rate of the second trick telegrapher, but is of the opinion that the parties shall determine between themselves as to which operator's trick the adjusted increase, retroactive to May 11, 1953, should be applied.

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FINDINGS: The Special Board of Adjustment No. 117, 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.

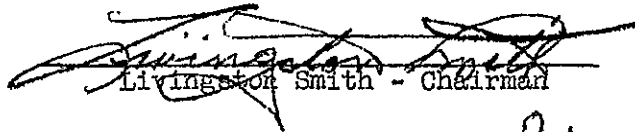
That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier violated the effective agreement.

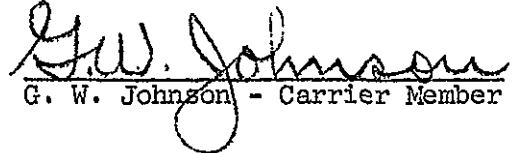
AWARD

Claim disposed of in accordance with the above Findings and Opinion.

SPECIAL BOARD OF ADJUSTMENT NO. 117

  
Livingston Smith - Chairman

  
C. O. Griffith - Employee Member

  
G. W. Johnson - Carrier Member

St. Louis, Missouri  
August 9, 1956