

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

**Lloyd K. Garrison, Referee**

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS  
ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY  
FORT WORTH & RIO GRANDE RAILWAY COMPANY  
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**DISPUTE.—**

"Claim of The Order of Railroad Telegraphers on St. Louis, San Francisco and Texas Railway Company, Fort Worth and Rio Grande Railway Company and St. Louis-San Francisco Railway, that the proper rate of pay for the first telegrapher-ticket agent in Paris, Texas, station should be eight-two (82) cents per hour from the date the operation of the station reverted from the Santa Fe Railway to the St. Louis, San Francisco and Texas Railway Company on July 1, 1932."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

There is in evidence an agreement between the parties dated May 16, 1928.

The positions of ticket agent and first, second, and third telegraphers were established and maintained at Paris until July 1, 1927, when, pursuant to a joint operations agreement between the Frisco and the Santa Fe, the Santa Fe took over the operation of the station for a five-year period terminating July 1, 1932. On that date the station reverted to the Frisco. During the period of the Santa Fe operation the position of ticket agent was abolished, and on July 1, 1932, when the station was turned back to the Frisco, the agency work was in charge of the freight agent and there were three telegraphers in the passenger station.

The Frisco, upon taking over the station, assigned the agency work to the freight agent as the Santa Fe had done and established the positions of first and second telegrapher, omitting the third telegrapher. The traffic had been reduced to two passenger trains a day, both around noon, and the first telegrapher, whose hours were from 7 A. M. to 3 P. M., sold the tickets for these trains. The second telegrapher had no ticket work because there were no trains during his trick.

The importance of the station at Paris, and the amount of the traffic prior to the Santa Fe operation from 1927 to 1932, justified the maintenance of a separate ticket agent and a separate freight agent. At the time the station was turned over to the Santa Fe there were approximately 14 employees all told. During the period of the Santa Fe operation, however, from 1927 to 1932, the traffic fell off substantially, the force was cut, and at the time the Frisco resumed operation in 1932 it was found necessary to carry only 6 employees.

The Frisco concluded, as the Santa Fe had previously concluded, that business did not require maintaining the position of ticket agent and that one agency would be sufficient for both the passenger and freight stations. But it is claimed that the position of ticket agent was not in fact abolished and that there was in substance a consolidation of that position with the position of first telegrapher, in which case the position should be paid at the higher rate.

There can be no doubt that the supervisory responsibility for the passenger business formerly entrusted to the ticket agent has been shifted over to the freight agent, and that the first telegrapher, although he sells tickets, is not made responsible by the carrier for the handling of the station or the passenger business. The question is not whether this change has been effected but whether the carrier had a right to effect it under the telegraphers' agreement and without negotiation and the consent of the employees. The freight agent who has now become the agent for and the responsible head of both the freight and the passenger business is not under the telegraphers' agreement.

Article 15 of the agreement established the position of ticket agent at Paris, and amounted to an agreement that the responsible head of the passenger station and the passenger business would be an employee covered by the agreement. Whenever a particular position is negotiated into an agreement and specifically placed there by the parties, it means only one thing, and that is that so long as the work is to be done it will be done by an employee filling that position under the agreement at the rate of pay fixed in the agreement. The position can be abolished if the work is not there but it cannot be handed over to an employee not covered by the agreement.

The work embraced within the scope of the ticket agency position written into Article 15 by the parties remains and has not been abolished. Since the station remains open and tickets are being sold and trains are stopping, the passenger business is still there and someone has to be responsible for it. But the responsible head is no longer an employee under the telegraphers' agreement. The freight agent who is outside the agreement has been made the responsible head. And that we think is in violation of the agreement. The case would be quite different if the passenger station were closed or no more passenger trains stopped at the station. Then the position established in Article 15 would in fact be abolished. But that is not this case. In effect, two supervisory jobs were created, one for the freight work and one for the passenger work. The freight work still continues and the passenger work still continues, and each must be supervised and be under a responsible head. But the passenger job has been taken out of the agreement and handed over to the freight agent, not because the passenger job is no longer there but because it is more economical to pay one man instead of two. Under these circumstances, it cannot be said that the job written into Article 15 has been abolished. It has simply been assigned over to someone outside the agreement.

When the Frisco resumed operations at Paris and found the business greatly decreased, it was perfectly justified in making economies. And economies were effected; the total force at the station was cut approximately in half. But in making economies it was essential to respect the terms of the agreement. Since the carrier had agreed that the responsibility for the passenger work would be in the hands of an employee covered by the agreement and since the carrier had at the same time an employee in charge of the freight work not covered by the agreement, the carrier, if it had wished for purposes of economy to have one man perform both duties, could have adopted any one of several courses without violating the agreement. (a) The ticket agent in addition to the passenger duties could have been given the freight work. (b) If the first telegrapher then employed was not in fact qualified for this combined position, the position could have been bulletined and filled by a properly qualified agent under the telegraphers' agreement. (c) The rate of pay of the ticket agent might have been negotiated downward to a point where the carrier would have felt it unnecessary to combine the work with the freight work. (d) In view of the changed circumstances, it is even possible that if the employees had been consulted they might have consented to the arrangement which was actually made. But no attempt to work out an admittedly needed adjustment was made. The carrier simply assigned the job which was under the agreement to an employee not under the agreement, who thereupon had two jobs under a single title.

The position of ticket agent was not lightly written into Article 15 of the agreement. The carrier states that the positions listed in Article 15 are the

most important agency positions in the schedule and that because of their importance they are not, under the agreement, subject to displacement by the exercise of seniority rights.

It may be argued that since the freight agent does not sell tickets he cannot be said to be filling the position of the former ticket agent. But a ticket agent may or may not sell tickets. Ordinary telegraphers and even clerks may sell tickets. Throughout its argument the carrier has stressed as the essential mark of the ticket agent's position the fact that he is the responsible head of the passenger business. The carrier has pointed out that during the period when a ticket agent was employed at Paris he was in complete charge of the passenger work; was responsible for it in his own name; did not report to the freight agent; carried the time of the passenger station force on a separate pay roll; and was in fact a passenger agent. The former freight agent, who was employed at the time the ticket agent was employed, stated that the latter had general supervision of the passenger and baggage business, handled the ticket and baggage accounts, sold tickets and solicited business; and that the freight agent had no direct responsibilities in connection with the ticket agency or accounts. With these facts admitted in the record, it seems clear that the responsibilities which constituted the essence of the ticket agent's position were assigned to the freight agent, and improperly assigned because the latter was not covered by the agreement.

In view of the importance of this case we think it worth while to review the authorities which have been cited by the parties as bearing upon the decision.

(a) U. S. Railroad Labor Board Decision No. 3806, Docket No. 4252, November 12, 1925, was cited by the carrier. There two positions were abolished and the duties assigned to a newly created position having altogether new and different powers and jurisdiction—a move dictated by technical considerations and designed to improve the service. We do not think the case is comparable to the present one.

(b) The carrier also cited U. S. Railroad Labor Board Decision No. 1867, Docket 2366, June 30, 1923, in which the position of first trick operator-ticket clerk was abolished and a supervisory agent from another department absorbed his office duties. It can be inferred from the case, however, that the supervisory agent did no telegraphy and that telegraphy was an essential part of the abolished position. We think the case not quite comparable to the present one in which all the essential duties of a ticket agent were assigned to the freight agent.

(c) U. S. Railroad Labor Board Decision No. 3924, Docket 4359, November 23, 1925, and U. S. Railroad Labor Board Decision No. 288, Docket 648, October 5, 1921, are cases in which freight agents absorbed the duties of ticket agents, and these cases are squarely in the carrier's favor.

(d) The employees, however, cite U. S. Railroad Labor Board Decision No. 3277, Docket 3482, April 6, 1925, in which it was held improper to abolish the position of ticket agent and assign the duties to a clerk who was brought in from another station and given the title of city passenger agent. We can see no difference in principle between giving the ticket agent's job to another employee with a different title brought into the station and not covered by the agreement, and giving the job to another employee already at the station and not covered by the agreement.

(e) Whatever may be the effect of these earlier decisions, two decisions by this division seem to us controlling. The first is Award No. 3, Docket TE-24, holding that where a position is vacant it cannot be assigned to an employee not covered by the agreement. It may be argued here that the ticket agency was abolished and not merely vacant, but we have seen that the duties and responsibilities which constituted the substance of the position were not abolished but merely attached to another employee, and could not be abolished while the passenger work remained to be supervised. It can fairly be said that when the Frisco resumed operations at the Paris station the position of ticket agent at that moment of time was vacant because when the Frisco left off operation the position was there, and when it resumed operation the duties were there but the title had vanished. In this sense there was a vacancy to be filled, but instead the Frisco assigned the duties to the freight agent.

(f) In Award 94, Docket TE-161 of the Third Division, an agent operator at Peabody and an Agent-Operator at Beverly, Massachusetts, were removed and the agency supervision of both stations was assigned to a general agent at Salem not covered by the agreement, who thereafter spent part of his time

daily at Peabody and Beverly. This decision is clearly to the effect that it is improper to discontinue the services of an agent and assign his duties to an employee not covered by the agreement.

The question remains as to what should now be done to correct the improper assignment of the ticket agency to the freight agent. The employees have argued that the first telegrapher from the time the Frisco resumed operations was in fact acting as ticket agent, and therefore should now be classified as such, with an award of back pay dating from July 1, 1932. But we do not take that view of the case. If, as we have found, and as the carrier has contended, the substance of the ticket agent's job consists of his responsibility for the passenger and station business, it follows that the first telegrapher did not in fact fill the position of ticket agent, but that the position was assigned over to the freight agent. The fact that the first telegrapher sold tickets is immaterial. Telegraphers often sell tickets, and did sell tickets at Paris when a ticket agent was in charge.

If the first telegrapher had formerly enjoyed the position of ticket agent and that position had been stripped from him and handed over to the freight agent, resulting in a reduction of pay, he might be entitled to an award of back pay and be restored to his former position. But so far as the record discloses there is nothing to indicate that this is what took place. During the first period of Frisco operation there were three telegraphers and a ticket agent. The Santa Fe took over these positions but abolished the ticket agency, retaining the three telegraphers, who were moved to the freight office, a fourth telegrapher being installed in the passenger station. Later the three telegraphers were moved back to the passenger station and the fourth telegrapher position was abolished. This was the situation when the Frisco resumed operations on July 1, 1932, the Frisco removing the third telegrapher and assigning the duties of ticket agent, which were automatically called for by Article 15, to the freight agent. There is nothing in the record to justify a finding that any duties which the first telegrapher had enjoyed theretofore under the Frisco management had been stripped from him.

Under the circumstances we think the proper course is for the carrier to bulletin the position of ticket agent in accordance with Article 15 and the rules of the agreement relating to vacancies. If the carrier feels that the present volume of business at Paris makes it uneconomical to continue to keep the supervision of the passenger business under an employee covered by the agreement as required by Article 15, the matter can only be adjusted by negotiation with the employees, in which event a number of alternatives already mentioned are available for consideration.

#### AWARD

The position of ticket agent at the Paris, Texas, station shall be bulletined at the rate of eighty-two cents per hour and filled in accordance with the agreement between the parties.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Ill., this 9th day of April 1936.