

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY**

DISPUTE.—

"Claim of General Committee of the Order of Railroad Telegraphers on B. & O. R. R. that the position of Assistant Agent at Fell Street, Baltimore, Md., a position covered by Telegraphers' Agreement at the basic rate of 71¢ per hour, which became vacant on August 1st, 1931, through the retirement of the incumbent and not since bulletined, shall now be bulletined for bids and filled in accordance with the governing rules of the Agreement; and the further claim that the employe who has been assigned to the position during the vacancy shall be compensated at the schedule rate of pay, and paid the difference between what he was allowed and what he should have been paid at the basic rate of 71¢ per hour."

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 Employee 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.

This dispute being deadlocked, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement bearing effective date of July 1, 1928, as to rules, and May 16, 1928, as to wage rates, is shown to exist between the parties.

The following statement of facts are certified to jointly by the parties:

"There is listed in the Telegraphers' Agreement, West End, Baltimore Division, a position of Assistant Agent at Fell Street, Baltimore, Md., basic rate of 71¢ per hour. Effective August 1st, 1931, Mr. Henry Hellwig, who had been filling the position many years, was retired on pension. At that time there was a clerk employed under his jurisdiction, which position has been retained. With Mr. Hellwig's retirement, the position of Assistant Agent was not bulletined, but was consolidated with that of the Agent at the Tobacco Warehouse, located nearby, the latter having jurisdiction and supervision over the Tobacco Warehouse and Fell Street operations. The agency at the Tobacco Warehouse is not covered by the Telegraphers' Agreement."

It sufficiently appears from the record both by the allegations of the employees and the admissions of the Carrier that the substance of the agency's duties and functions at Fell Street were not abolished but were simply transferred to the Agent at the Tobacco Warehouse who was not covered by the Agreement between the parties. This case is fully governed by the principles laid down in Docket TE-152, Award No. 231, of this Division and in the other cases cited in that award holding that the transfer of the duties of a position to a person not covered by the Agreement is improper. This case is even stronger

since it appears that the Agent at the Tobacco Warehouse was not in the direct employ of the Carrier.

The second portion of the Employees' claim, namely, "that the employee who has been assigned to the position during the vacancy shall be compensated" etc., cannot be sustained. The supervisory functions and responsibilities of the agency in question, which constitute the substance of the position, were assigned to the Agent at the Tobacco Warehouse and, since he is not covered by the Agreement and as it appears is not in the direct employ of the Carrier, we obviously have no jurisdiction whatever over his compensation. The theory of the award is, not that he was paid too little for the work, but that the work ought not to have been assigned to him at all. The assignment of the work to him did not make him an employee or bring him under the terms of the Agreement.

AWARD

The claim is sustained to the extent only that the position of assistant agent at Fell Street should be bulletined and filled in accordance with the Agreement.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 21st day of April 1936.