

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GREAT NORTHERN RAILWAY COMPANY

DISPUTE.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Great Northern Railway, that the management of that company violated the Telegraphers' Agreement by arbitrarily removing the agent at Ballard, Washington, from his regularly assigned position at that point in September 1931, and arbitrarily extending the jurisdiction and supervision of the agent at Seattle Dock, Washington, a position not within the provisions of said agreement, over the position at Ballard; that the position of agent at Ballard shall be bulletined and filled from the Telegraphers' List and award the position to an employe subject to the terms of existing agreement between the parties and in the manner therein prescribed."

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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, Willard E. Hotchkiss was appointed Referee to sit with the Division as a member thereof.

An agreement bearing effective date August 1, 1927, is in effect between the parties.

The parties have certified the following "Joint Statement of Facts":

"Agreement between the Great Northern Railway Company and the Order of Railroad Telegraphers designated as Schedule No. 5, lists among the positions covered thereby, position of 'Agent-Telegrapher, Ballard, rate 83 cents per hour.' Schedule No. 5 became effective August 1st, 1927, and is still in effect. Rate of pay was revised by mutual agreement to 95 cents effective May 10th, 1930.

"Bulletin No. 130, September 19th, 1931, read:

"Effective September 22nd, Ballard Passenger Agency will be closed.
"C. McDonough, Superintendent."

"F. C. Griffin, the regularly assigned agent-telegrapher at Ballard, was thereupon checked out and supervision and jurisdiction of business transacted at Ballard thereafter was assigned to the agent at Seattle Dock, a position exempt from the provisions of Telegraphers' Agreement as per Article XXX-c."

POSITION OF EMPLOYEES.—The essence of this claim is that the agency at Ballard was abolished in name, but was not abolished in fact.

About 1914 the company rearranged its tracks so as to by-pass the former Ballard Station. A new passenger station was built on the new main line approximately one and one-half miles from the former station which was continued in operation with one agent serving both the old Ballard and the new Ballard without change in rate of pay or working conditions. This was the

condition when the Organization negotiated its first agreement with the Railway. The position of agent-telegrapher at Ballard was incorporated into that agreement which bore date of April 1, 1919.

The automobile and passenger bus cut into the passenger business to such an extent that by 1931 practically no tickets were sold at the passenger station, and the agent, Mr. F. C. Griffin, spent only time enough at the passenger station to meet one train, spending the balance of his time each day at the freight depot where he maintained his office.

On September 22, 1931, the carrier closed the Ballard passenger agency and boarded up the windows of the passenger station. In addition, the company checked out the agent at Ballard freight station, F. C. Griffin, and turned over jurisdiction of the station to Mr. H. P. Christensen, agent at Seattle Dock, a position not within the scope of the Telegraphers' Agreement.

Petitioners maintain that the freight depot was not closed in any detail but continued open for business exactly as it had been for many years, and that the action of the carrier had the effect of arbitrarily removing Mr. Griffin as agent at Ballard and substituting Mr. Christensen in his place in violation of the agreement. Petitioners cite Article XXX-(c) and Article XXXI of the agreement, to wit:

"Article XXX-C of current agreement, schedule No. 5, Page 17, specifically exempts the positions not covered by our current agreement, and the agent's position at Seattle Dock is listed as among those not covered by the agreement, as agreed to in the joint statement of facts attached thereto."

"Article XXXI of schedule No. 5, Page 18, the current agreement, reads as follows:

"*Status Re-Classified Positions.*—Should the position of an agent classified in this schedule as supervisory be changed to a routine position, it will then be eliminated from the provisions of Article XXX-(c), and will revert to, and be governed by, the provisions of this schedule. Should the position of an agent governed by this schedule be made supervisory (as per Article XXX-(c), it will be eliminated from this schedule and be added to Article XXX-(c). *Transfers of any position of an agent to or from the provisions of Article XXX-(c) will be made only after conference and agreement with employees' representatives.*"

Petitioners cite that no notice of any kind was served on them concerning the contemplated action, no conferences were conducted, and no agreement of any kind entered into; whereas, they submit that the agreement provides that changes of this kind "will be made only after conference and agreement with employees' representatives."

Petitioners submit that for some time after Mr. Griffin was checked out the company continued to carry separate accounts at Ballard and only discontinued to do so when petitioners presented their claim based on the contention that the agency at Ballard had not been abolished in fact and requested the position to be bulletined and filled from the telegraphers' seniority list. Petitioners further claim that after the removal of part of the accounting work to Seattle Dock, the Ballard depot remained open as before and carried on a regular freight business as before. The petitioners say that they continued to press their claim to have the company bulletin the position, and cite as evidence of their claim that the agency was not abolished an excerpt of a letter from Mr. J. H. O'Neill bearing date of April 20, 1933, to wit:

"I cannot agree with your views in regard to these positions coming under the agreement of your Organization. The cashier at Ballard comes under the jurisdiction of the agent at GN Seattle Dock who is in effect also the agent at Ballard."

Petitioners also cite a letter which Mr. O. P. Johnson, General Chairman of the O. R. T., wrote to Mr. J. C. Rankine, Assistant to Vice President of the Great Northern Ry., on July 12, 1935, in which this language is used:

"We do not question the right of the company to abolish positions, provided such positions are abolished in fact, but as in this case at Ballard it is our contention that the Ballard Agency has not been abolished but merely vacated so far as our craft is concerned and said position placed under the jurisdiction of an exclusive agent at Seattle Dock, a position not covered by the present agreement but specifically excluded from the terms of our agreement as stipulated in Article XXX-C."

On September 13, 1935, Mr. Rankine made reply to Mr. Johnson's letter, from which the above excerpt was quoted, as follows:

"Your letter of July 12th, in regard to position of agent at Ballard, Wash. "I cannot agree with your contention. The position of Agent at Ballard has been abolished in fact, accounts and pay rolls of Ballard having been consolidated with that of Seattle Dock. I cannot comply with your request for reestablishment and rebulletining of the agency at Ballard, *which position has not existed for over two years.*"

Petitioners maintain that the statement in Mr. Rankine's letter that the position had not existed for over two years is equivalent to an "admission that the agent's position existed until two years ago, during which time we were asking that this position be bulletined to our craft on the grounds that it had not been abolished."

Petitioners also submit (Exhibit E-1) "Official List of Officers, Agents, and Stations, No. 103, corrected to January 1, 1934," in which Ballard is listed as a separate freight agency position with H. P. Christensen shown as agent at Ballard, station No. 1807, class of office, "freight station." This, they claim, confirms their position that the freight agency at Ballard has never been abolished.

Petitioners also cite photostat copy of bill-of-lading issued at Cashmere, Washington, signed by the agent under date of October 7, 1935, for one carton of apples shipped collect from Oliver Johnson to Oliver Johnson at Ballard, Washington, Ballard being an open freight station according to the tariffs on file at Cashmere. This bill-of-lading is Exhibit E-2.

Exhibit E-3 is a photostat copy of original receipt issued at Ballard covering this shipment, dated October 11, 1935, signed by H. P. Christensen, agent at Ballard, and stamped with the official seal of the Great Northern Railway at Ballard. Petitioners submit that Ballard Station is under separate freight tariffs and that shipments may be made, and are being made, in and out of this station, both prepaid and collect, and both carload and L. C. L., exactly as at any other open freight station where the company maintains an agent.

Petitioners submit that the word abolished means "to do away with," or "to bring absolutely to an end." They say that if the station had been abolished when Mr. Griffin was checked out there would have been no reason to appoint Mr. Christensen as agent, since when a position is abolished there is no position left to be filled by another employe.

Petitioners further analyze the duties of an agent and the particular conditions which constitute an agency.

Petitioners submit their current agreement schedule #5 which shows 'Ballard, Agent-Telegrapher,' rate 83¢ per hour, which rate, they say, has been changed by mutual agreement to 95¢ per hour. They submit that the agreement now in force was to be effective until August 1, 1928, and thereafter until thirty days' notice in writing shall have been given by either party asking for a change. No such notice has been given.

Finally, they contend that so long as the carrier maintains an open station at Ballard and business is being transacted there, the management has no right to remove this position from the terms of the contract.

The petitioners then cite the Scope Rule, Article I, of the agreement as showing that "agents" is one of the positions over which the Order of Railroad Telegraphers has jurisdiction. They further submit that agents have always performed this class of work and that Mr. Christensen's position is a supervisory position not covered by the agreement or any other agreement.

Petitioners cite Award No. 3 of this division, bearing date of January 21, 1935, in which the division ordered the Rock Island to bulletin a position at East Moline, Illinois, which had been vacated but not abolished.

POSITION OF THE CARRIER.—The carrier gives a history of the Ballard Station before and after Ballard was incorporated in the City of Seattle, and refers to the absence of passenger and decline of freight business as the reason for abolishing the agency.

The carrier points out that Mr. Griffin, incumbent of the position, has exercised his seniority and has since been employed as agent or telegrapher at various points. The carrier further submits that no complaint in regard to its action was heard until the spring of 1933 when a dispute concerning another sub-freight station in downtown Seattle arose, at which time complaint was filed by the ORT in reference to Ballard. The carrier points out that the other complaint has been dropped and that the management assumed the Ballard

matter was closed since they heard nothing further in response to their declaration to reinstate the Ballard agency on November 7, 1933, until the present year (1935) when the matter was again presented with the request for a joint submission to this Board.

The carrier does not agree that as long as any force of any kind is maintained at Ballard freight house to contract the public in the handling of railroad business that such transactions constitute a separate agency.

The carrier contends that the agency has actually and in fact totally disappeared. The carrier also submits that one employee who performs this service at Ballard, classified as an assistant cashier Seattle Dock, has occupied the same position and performed the same duties he now performs for some twelve or fifteen years, and that he now functions under jurisdiction of the agent at Seattle Dock just as he did formerly under jurisdiction of the agent-telegrapher at Ballard.

The carrier further submits that there is no agency at Ballard, no accounting station, no Ballard accounts of any kind as a separate reporting division, and that Ballard is a portion of the territory reported through Seattle Dock Agency, just as are dozens of stations on the Railway where an agency at one time existed. It is also pointed out that there are stations where an agency is maintained only at certain seasons.

Carrier submits that the provisions of the Great Northern manual pertaining to the handling of business to and from non-agency stations are being complied with in handling all such business at Ballard.

Carrier's Exhibit C-2 includes copies of typical waybills covering freight forwarded from Ballard, and notes that in all such cases the original point of shipment at Ballard indicates that Ballard station 8644 was billed through agency at Seattle Dock, Station 8510. Carrier explains that the inclusion of the name of the originating non-agency station is necessitated not for accounting purposes but for statistical data, which is maintained separately for each location, regardless of whether it be an agency or a "star" station.

Carrier further points out that, Exhibit C-3, copies of typical waybills covering freight received at Ballard in most cases do not even mention Ballard as the destination. Carrier further submits that the identity of details of shipments which might be credited to the Ballard station is completely lost since they are merely items making up the Seattle Dock Agency business.

Carrier infers that petitioners base their claim on the fact that an employee was actually doing business with the public at Ballard, and says that this position means an absolute inhibition against dealing with the public at any specific location without the inauguration of an agent's position thereat, and then observes, "such a claim is so far reaching, and is so extremely in conflict with existing conditions and practices, both on this railroad and throughout the country, as to appear absurd."

In reference to Decision #3, Docket TE-24, the carrier submits that the agency involved in this case had not been abolished in any degree, and submits that the very details of the station at East Moline were handled in exactly the opposite manner at Ballard. The carrier then continues, "the agency was abolished by bulletin notice, and the incumbent exercised seniority; the records of Ballard agency were closed out and all agency authority vested in an adjoining agency; Ballard as an agency station ceased to exist. There is no agency at Ballard for an 'agent-telegrapher' to fill; there are no telegraph or telephone facilities for him to operate; there are no trains for him to serve; there are no passengers to whom to sell tickets; there is nothing but a small industrial area in which certain patrons are served by a switch engine and one subordinate station employee." The carrier's position concludes with the following paragraph:

"In conclusion, the carrier desires to ask just what particular action is necessary properly to abolish an agency, if they have failed to do so at Ballard. The carrier does not need and does not want an agency there, and the award in the Board's decision No. 3, Docket TE-24, recognized the right of a carrier to elect either to continue or discontinue an agency. In the present case, the carrier has attempted to discontinue an agency in the same manner that agents' positions and agency accounts have been discontinued for years. If that method is improper or inadequate, this carrier prays that the Board may indicate in what action the carrier has failed or what action taken is in error, for their future guidance in this and similar cases."

ORAL STATEMENT BY PETITIONERS.—

On January 14, 1936, petitioners submitted a statement in which they analyze and answer arguments advanced by the carrier. Petitioners submit that they have carefully reviewed the position of the carrier and fail to find any claim that the language of Article XXXI reading: "Transfers of any position of an agent to or from the provisions of Article XXX-(c) will be made only after conference and agreement with employees' representatives," was complied with.

Petitioners then cite from the Great Northern manual of instructions now in effect, Rules 280 and 281, in reference to non-agency stations, to wit:

"NON-AGENCY STATIONS

"Freight for non-agency stations

"RULE 280. A non-agency station is a station where there is no freight agent.—All freight except Government freight covered by Government bill of lading billed to such stations must be prepaid.

"Shippers' Order' Shipments

"RULE 281. Shipments to non-agency stations.—Under no circumstances will agent accept freight for shipment to a station without a freight agent, when consigned 'Order, Notify'.

"Delivery Order' Shipments

"Agents must not accept shipments on 'straight' bills of lading for non-agency stations when consigned to one party 'Advise' another party and requiring surrender of 'Delivery Order'.

"Prepayment

"'Straight' shipments originating on this line, except when covered by Government bill of lading, must be fully prepaid."

Petitioners point out that some of the carrier's waybills, copies of which were shown, do not make any reference that such shipments are destined to Ballard as they are billed to "Seattle, Washington," and contend that this does not prove anything in reference to the dispute.

Petitioners then reiterate original contention in reference to shipments of carload and L. C. L. freight collect to Ballard, which could not be done under the rules unless there were a freight agent at Ballard, and they cite particularly the shipment of a carton of apples made by O. P. Johnson, collect, from Cashmere to Ballard, they also point out that the Cashmere Agent's records showed a freight agency at Ballard with H. P. Christensen as agent.

Petitioners maintain further that the manner in which the carrier does its accounting in respect to Ballard revenue does not change the status of Ballard as an open freight agency, and in this connection they point out that when Mr. Griffin was agent at Ballard he did not personally do the accounting for the revenues, but that this work was done by his subordinate employees just as it is now being done by the subordinate employees of Mr. Christensen.

Petitioners also reiterate their contention that the existence of a freight agency at Ballard is acknowledged over the official seal of the carrier, and the name of the present agent, H. P. Christensen, is officially signed as Agent at Ballard, which fact is confirmed by the carrier's official list of Agents as shown in petitioner's Exhibit E-1.

As to the significance of the action of the carrier in handling some of its accounting at Seattle Dock, the petitioner asserts that a change in the accounting system was made at some of the larger freight agencies some time ago, and that the change in respect to Ballard is merely a part of this improved practice.

As to the carrier's contention that the business handled into and out of a "star" station or non-agency station is handled exactly as they are handling it at Ballard, the petitioners again cite Rule 280 in which this language occurs: "A non-agency station is a station where there is no freight agent."

Petitioners cite carrier's Exhibit C-3 covering a carload of 528 sacks of cement with freight charges of \$40.13 to be collected by the agent at Ballard. They point out if Ballard had been a non-agency station it would have been necessary to have sent this shipment prepaid.

Petitioners further submit that there has never been a difference of opinion between the petitioners and the carrier as to what constitutes a closed station except in this case. Petitioners take issue with the statement of the carrier that it has attempted to discontinue an agency, and submit that the facts are that neither the agency nor the agent has been discontinued since the station is open for business exactly as it always has been. Petitioners also take exception to the statement that carrier has attempted to close Ballard station in the same manner as agency positions and agency accounts have been discontinued for years. Petitioners say, "We do not and cannot concur in any such statement."

Petitioners then cite several cases in which stations were closed and in which no agents were listed thereafter. They say nothing like this situation has ever existed at any other station which has been closed.

Petitioners submit that it is immaterial whether the agent performs telegraph or telephone work, and cite Article II-B of Telegraphers' current Schedule #5, which provides that, "When an agent-telegrapher's position is made an exclusive agency, the agent-telegrapher's rights thereto shall be the same as to his original position."

The petitioners submit that Ballard is a very important station, that the business there is highly competitive, and that it is necessary for the station to be kept open in order that the carrier may get its share of the business. They submit that if the Ballard station had been unimportant the rate would not have been increased from 83¢ to 95¢ per hour in 1930, and point out that this action was taken after the express business had been removed and after the passenger business disappeared.

Petitioners take exception to the statement of the carrier that petitioners do not base any claim upon the fact that the Seattle Dock Agency is an exempted position, and cite correspondence between the parties to indicate that this point is covered in their complaint. They also point to the fact that the joint statement of facts proves this contention.

Certain other points were emphasized in the report of the oral statement, but they were sufficiently covered in other parts of the record.

CARRIER'S REBUTTAL STATEMENT.—Carrier calls attention to a letter of former agent, F. C. Griffin, dated July 17, 1933, as quoted by the employees, and observes: "It is rather significant that he reports himself as performing various services which are anything else but an agent's exclusive prerogatives." After listing a number of items, the carrier continues: "all such work unless associated with an agent's responsibility, is recognized by, negotiated for, and claimed as their own by the Brotherhood of Railway Clerks." The carrier makes the point that the Ballard agency had a subordinate who performed the clerical services when Mr. Griffin was agent, and then raises this question; "Because cars are sealed and checked, because yard checks are made, because cars are loaded and unloaded, must an unnecessary agency be maintained so that an agent, perforce, may be privileged to perform services which can accrue to him only because of such agency authorization?"

The carrier then reasserts its contention that the agency at Ballard has been abolished, and points out that there have been no additions or subtractions from the list of stations during the last five or six years. Carrier says there are literally dozens of stations on the Great Northern now closed in which the business is handled through other agencies. The carrier reiterates, in spite of the petitioners' contention that the application of Rules XXX and XXXI to this case was specifically disowned by the employees in conference, and says that the carrier joined in a submission of the case to the Board upon representation that the question involved was whether or not an agency now existed at Ballard. The carrier says, "If there is in fact an agency at Ballard, then such position undoubtedly comes within the classification of a scheduled position; if there is not in fact an agency at Ballard, then the claimants' argument falls, and neither Article XXX or XXXI have any bearing upon the matter."

The carrier maintains that the amount of business handled, nor the manner of handling it, has any bearing on the question of whether there is an agency or not, unless and until there is an open and individual station account set up

and an employe placed in charge of it. Carrier places great emphasis on the accounting feature of an agency and says that, "No agency exists which does not have its own separate accounts, reports, and authority; and when such separate account and authority ceases, the agency ceases."

In respect to the transfer of accounts, the carrier uses the following language:

"Page 5 of the Employees' Position in the second paragraph thereof, contains a sad commentary upon the lack of omniscience on the part of representatives of both the Employees and the Carrier. It sets forth that for some time after the alleged closing of Ballard Agency, the accounting of business through the agency accounts authorized at Ballard continued; and neither of us knew it. Immediately upon notice of such anomaly being brought to the attention of the Carrier's representative by the Employees' representative, such impropriety was corrected. Technically, the Carrier really was guilty of a violation of schedule during that period of ignorance, for the agency *HAD* been allowed technically to continue, through the continuance of the Ballard Agency accounts. However, that error was corrected immediately upon its becoming evident, just as any apparent oversight in method of handling is corrected, and as noted on page 14 of the Carrier's Position, such correction apparently closed the matter, until after another lapse of many months, request was made for this joint submission. Where duties of employes bring them under the instructions of several departments, occasionally a correction to some particular departmental method or action is necessary to insure compliance with schedule rules."

The carrier then cites further correspondence and notes that after the letter of November 7, 1933, from Asst. to Vice President to General Chairman, the whole question slumbered after the accounting matter was adjusted for some seventeen months, until April 1, 1935, and infers that the revival was the reflection of this Board's decision in Award No. 3, Docket TE-24.

After a reference to certain citations in regard to a contemplated trip to the Coast for a personal survey, which does not appear of great importance, the carrier refers to the petitioners' citation of carrier's official list of officers, agent, and stations, in employes' Exhibit E-1. Carrier says this does not pretend to be a certified list of positions, and points out—for example, on Page 1, you will find George Turgeon listed as agent at Superior Freight, Lake Transfer, and Superior Dock. They say there are no separate agencies at these points. Carrier points out certain other items in the list which they maintain shows that the citation of it is not significant.

As to Mr. Johnson's shipment of a carton of apples from Cashmere to Ballard, carrier notes that the expense bill carries date line, Great Northern Seattle Dock Station. They say that exactly the same routine was handled at dozens of delivery houses throughout the United States where there is no separate authorized agency, but merely a branch house.

Carrier takes issue with petitioners' position that when business of a station diminishes, reduction of force naturally is made in positions other than that of agent, so long as an authorized agency exists thereat, but not otherwise.

Carrier also takes exception to petitioners' position that where freight or passenger stations covered by our agreement are kept open for business by the company an agent shall be maintained. Carrier submits that there is no such provision in the schedule, and that no rule is quoted and no precedent established.

Carrier then goes into an extended argument as to what constitutes an agency, and concludes with the statement of the carrier's contention that this case seeks to establish a principle far broader than the statement of facts set forth. There is further elaboration of this position, all based upon the assumption that the petitioners' contention is intended to prevent the transaction of any business at a station without the maintaining of an agency thereat.

The carrier's position concludes with this paragraph:

"The carrier realizes that the employes may fear that the carrier is attempting to set up a principle under which it might abolish all but one agency over an entire section of railroad, to their detriment, by the consolidation of accounts. On the other hand, the employes' contentions

carry the reverse threat of trying to set up a principle that would indefinitely multiply the number of agencies and create endless disputes as to the performance of what duties constitute an agent's position. The middle and reasonable ground is, of course, for this Board to confine its attention to the actual existing situation at Ballard, as here developed, and render its opinion merely as to whether the position of 'Agent-Telegrapher, Ballard,' as listed on page 70 of the schedule, has in fact been abolished. If such opinion be negative, then the carrier once more requests the good graces of the Board to designate the particularity of action necessary to accomplish such abolition; for the carrier certainly does not desire to maintain agencies which serve no purpose other than to provide employment to one employe in preference to another."

OPINION OF THE REFEREE.—In suggesting that each side is naturally anxious lest the agreement be stretched unduly to its detriment, the carrier shows a reasonable attitude. The carrier's request that, in case of a ruling adverse to its contention, the Board designate what further action must be taken in order to abolish the Ballard Agency, is also reasonable. It would not be easy, however, to comply with this request without, by implication at least, setting up principles which could be cited in future cases. The Board has no power to prevent the citation of its decisions or its arguments whenever litigants think it advantageous to cite them.

Petitioners ask the Board to rule that the agency at Ballard has not been abolished in fact and to order that the position be bulletined and filled under the terms of the agreement.

The Referee finds the argument of petitioners extreme when they cite a definition of the word "abolish" which makes it mean, "to bring absolutely to an end." While dictionary definitions are useful, words are not used in a vacuum, but as a part of the context in which they are found. There is no rule of the agreement to prevent the carrier from keeping stations open and placing employees at points on its line where no agency exists. The carrier can take any measure it deems wise in order to accommodate the public or to stimulate business, provided it lives up to its agreement in so doing.

Petitioners assert that Ballard is an important station transacting a large amount of business. The carrier asserts that there is no passenger business and that the freight business consists primarily of switching. Both parties are in agreement that there is work to be done at Ballard which is of considerable importance to the carrier. If, however, this work is not of sufficient importance to justify maintaining an agency, there is nothing in the agreement to prevent the carrier from maintaining employees at this station provided no attempt is made to transact business on any other basis than the basis on which it is rightfully transacted at other stations at which no agency exists.

The previous agent at Ballard, Mr. Griffin, has exercised his seniority rights to obtain employment under the agreement elsewhere. It appears, therefore, that no personal claims are involved in this case.

The Referee has considered the several cases cited in reference to abolition of agencies. There is no question concerning the right of the carrier to abolish an agency and to transact the business previously done by the agency in question, through another agency. However, the right to abolish cannot be invoked to take an agency out of the agreement merely by putting it under the jurisdiction of an agent who is not covered by the agreement. In other words, the abolition must be an abolition in fact and not merely in name. The carrier was in error in omitting to consult with representatives of the employees before taking the action it did in reference to the Ballard agency. The record does not reveal any circumstance which would exempt this action from the requirements of Article XXXI, which the Referee considers applicable.

Aside from failure to consult, the Referee finds that the action of the carrier was in violation of the agreement insofar as it attempted to take the agency at Ballard out from under the scope of the agreement without making all of the changes which would have been necessary in order actually to abolish the agency. The record shows that for some time after the alleged abolition of the agency, the accounts were kept at Ballard just as they had been prior to the alleged abolition. The carrier says that this was a regrettable oversight which was corrected as soon as its attention was called to it. But the record also shows that other rules applicable to abolished agencies have not been enforced in

respect to the agency at Ballard, and that carload and LCL freight business has been done from this station in a manner in which the rules of the carrier *do not* permit such business to be done from a station at which no agency exists.

The one statement in Mr. O'Niel's letter of April 20, 1935, that the agent at Seattle Dock "is in effect the agent at Ballard" taken by itself does not necessarily prove the continuance of the agency. It is, however, corroborative of other circumstances which indicate clearly that the carrier was thinking of Ballard as a place at which an agency was in existence. The parties are not in agreement as to the significance of certain operating records cited as exhibits. It is not essential to reconcile all the detailed contentions in respect to these papers. Taken with all the other circumstances of the case, including the fact that the bulletin of September 19, 1931, made no reference to the freight agency and that the carrier proceeded to turn the agency over to Christensen, these papers indicate strongly that the agency continued. The whole record convinces the Referee that it still continues in effect.

As to further action required to accomplish the abolition of the Ballard agency, the carrier needs only to apply the rules which rightfully apply to other non-agency stations, more particularly rules 280 and 281. Also, if the carrier desires to abolish the agency at Ballard it must cease to advertise Christensen or anyone else as agent at Ballard. The carrier need not discontinue stationing employees at Ballard as may be needed to accommodate the public, provided these employees do not transact business which the agreement and the carrier's rules require to be transacted by an agent.

The Referee does not deem it essential to go into greater detail as to rules which may or may not be pertinent to the question whether an agency does or does not exist. He assumes that in future conferences each party will give as much consideration to the legitimate interests of the other as observance of the rules permit and he is convinced that with the ruling herein made the parties can dispose of the issue.

AWARD

- A. The agency at Ballard has not been abolished.
- B. The carrier may elect whether it wishes to abolish the Agency or not to abolish it.
- C. If the Carrier wishes to cover the Ballard station under the provisions of Article XXX-(c) it shall confer and agree with official representatives of the ORT as provided in Article XXXI.
- D. If the Carrier elects not to abolish the agency at Ballard the position shall be bulletined within thirty (30) days after date of this Award.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 18th day of September 1936.