

NATIONAL RAILROAD ADJUSTMENT BOARD  
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of the Order of Railroad Telegraphers, New York, New Haven & Hartford Railroad, that Agent-Operator J. W. Keough was on August 15, 1935, improperly removed from his regularly assigned position as Agent-Operator at Canton, Mass., and that he be restored thereto."

STATEMENT OF FACTS.—The parties jointly certified the following:

"Prior to August 15, 1935, there existed a position of Agent-Operator at Canton, Mass., paying 69 cents per hour. At the same time there existed a position of Agent at Canton Jct., Mass., paying 71 cents per hour. Canton and Canton Junction are both in the town of Canton and located .62 miles from each other.

"Effective August 15, 1935, the joint agency of Canton Jct.—Canton was established.

"The separate positions of Agent-Operator at Canton and the Agent at Canton Jct. were included within the scope of the Telegraphers' Agreement. The position of Agent at Canton Jct.—Canton is likewise so included."

POSITION OF EMPLOYEES.—The employees contend the action of the carrier in discontinuing the Canton agency and position of Agent-Operator on August 15, 1935, and placing the agency under the jurisdiction of the Agent at Canton Junction, constituted a violation of the agreement of March 25, 1927, between the N. Y., N. H. & H. Railroad and the Order of Railroad Telegraphers, which was operative at the time of the dispute and placed in evidence in this proceeding, in that the work at Canton continued in practically the same manner as before the position of Agent-Operator, Canton, was discontinued.

That the Canton agency was not in fact discontinued, but is operated in the name of the Agent at Canton Junction, with the assistance of clerks and that the positions of Agent-Operator, Canton, and Agent, Canton Junction, are covered by the agreement and specifically, Article 1—Scope:

"ARTICLE 1

"Scope.—This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), operators of mechanical telegraph machines, agent-telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators, staff men, and such agents as may be included in the wage scale and will supersede all previous schedules, agreements, and rulings thereon."

The Telegraphers' System Board of Adjustment decisions in dockets 1, 2, 16, and 26 were based on equity and were not interpretations of the agreement. Also that Third Division Awards 3 and 94 support claim.

**POSITION OF CARRIER.**—The carrier contends it has a right to eliminate or combine positions. The question of transferring jurisdiction of a schedule position to an employe outside of the schedule is not involved in this case and Third Division Awards 3 and 94 are not applicable.

Previous consolidations of agencies covered by the agreement have been recognized and agreed to, as evidenced by Telegraphers' System Board of Adjustment decisions in dockets 1, 2, 16, and 26, all of which cases involved the same principle as here presented.

Decisions of the former System Board of Adjustment, which was established by agreement between the Order of Railroad Telegraphers and the carrier, constitute interpretations of the agreement, which both parties agreed to accept and abide by as final and conclusive. Decisions in dockets 1, 2, 16, and 26, as well as 18 and 27, established principles having all the force and effect of the agreement itself and can be set aside only by agreement between the parties, or as provided in Section 6 of the Amended Railway Labor Act.

As to the importance of System Adjustment Board decisions, Third Division Award 233 is cited.

Exclusive agency positions decreased as follows:

January 1924	247 positions.
August 1925	231 "
March 1927	205 "
1928	183 "

This decrease was largely due to combining two or more stations under one agency, a practice of long standing.

In further support of and as evidence of the accepted practice, General Chairman Handy's letter of May 9, 1931, to Secretary Perry, of Telegraphers' Board of Adjustment, is cited to show no complaint was made as to combining stations but concerned only transportation for the agent.

**OPINION OF THE BOARD.**—The condition upon which this claim is based is the removal on August 15, 1935, of Agent-Operator J. W. Keough from his regularly assigned position as Agent-Operator at Canton, Mass., and the placing of that agency under the jurisdiction of the agent at Canton Junction. The carrier contends it has the right to eliminate or combine positions, and that such action is of long standing and recognized and agreed to as evidenced by Telegraphers' System Board of Adjustment decisions in dockets 1, 2, 16, and 26. The employes do not agree with the carrier's contention that the decisions of the former Telegraphers' Board of Adjustment which they have cited constituted an interpretation of the agreement between the employes and the carrier, and gives to the carrier the right to eliminate positions from the agreement in any other manner than that provided for in the agreement and the Railway Labor Act. In each of the cases cited by the carrier the former Telegraphers' Board of Adjustment very definitely stated, "In disposing of cases of this character the Board feels that each case should be decided on its merits, without regard to the situation at any other point," and it is only on this basis that an equitable decision can be rendered on such disputes as may arise.

In the instant case, the employes have not disputed the right of the carrier to discontinue or abolish an agency where such action is properly taken under the mutually agreed upon rules, and when such discontinuance or abolishment is to eliminate the work and duties for which the agency was created or to reduce the work and duties to such an extent as to require only a small proportion of the service that was indicated when the station was negotiated into the agreement. Where, however, a condition exists such as would indicate the economic advisability of discontinuing or abolishing a station that has been negotiated into the agreement between the carrier and the employes, and as specified in Article 1 of the agreement, such change or revision of the rules should be made in accordance with the provisions specified and agreed upon in Article 29, Paragraphs (a) and (c) of the agreement. In the conditions evidenced at the time of the removal of the Agent-Operator at Canton and the assignment of that agency to the jurisdiction of the agent at Canton Junction, the fact is apparent that the agency at Canton was neither discontinued nor abolished and that there was little, if any, change in the work and duties of the station from that which was indicated when the station was negotiated into the agreement between the employes and the carrier.

In connection with the contention of the carrier that, "it has the right to eliminate or combine positions; that such action is of long standing and recognized and agreed to as evidenced by Telegraphers' System Board of Adjustment decisions," this Board submits its opinion that in any changes in which the rules of the agreement between the employes and the carrier are affected, or in which positions that have been negotiated into the agreement are concerned, the carrier is equally obligated with the employes in following the orderly process that has been provided in the rules when such changes are contemplated. Further, the Board concurs in the statement made in connection with the cases cited by the carrier that, "each case must be decided upon its merits."

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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;

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

That the carrier violated the rules of the prevailing agreement between the parties in removing Agent-Operator Keough from his regularly assigned position at Canton on August 15, 1935.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 7th day of May, 1937.