

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NEW YORK CENTRAL RAILROAD COMPANY (WEST)

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad Company; that Goodrich, Illinois, station agency, a scheduled position, was consolidated with station agency at Union Hill, Illinois, also a scheduled position; that Agent L. E. Poynter by reason of this act was improperly displaced from his regularly assigned position as Agent at Goodrich on April 17, 1935; that Goodrich be reinstated as a full time agency, and L. E. Poynter be restored thereto and compensated in full for any monetary loss resulting from the Carrier's action in removing him from his assignment; also compensate other employees any monetary loss sustained account irregularly displaced as a result of this consolidation and, that Union Hill also be reinstated as a full time agency and its original schedule status."

STATEMENT OF FACTS.—In their ex parte submission the General Committee stated the facts as follows:

"The Telegraphers' Agreement effective May 16, 1928, which agreement is still in effect, includes the position of agent-telephoner at Union Hill, Illinois, rate 61¢ per hour, and the position of agent-telephoner at Goodrich, Illinois, rate 60¢ per hour.

"On April 17, 1935, the carrier consolidated these two station agencies and thereafter one agent was instructed and required to perform the work at both stations, dividing the time as follows: Goodrich from 7:00 A. M. to 10:30 A. M., and Union Hill from 10:45 A. M. to 4:00 P. M., daily except Sunday.

"A rate of 61¢ was established by the management without negotiations and applied to the (Union Hill-Goodrich) consolidated agency. This rate, 61¢ per hour, was the compensation the agent received, after the consolidation, for service performed at both stations. In addition to this \$15.00 per month was allowed the agent to cover the expense of operating his automobile between these two stations. Later, on October 1, 1935, a graduated rate on a mileage basis was put into effect. This rate was as follows:

	<i>Cents per mile</i>
For the first 100 miles or less.....	6
For the next 400 miles or part thereof.....	4½
For the next 500 miles or part thereof.....	3
For the next 1,000 miles or part thereof.....	2

"On September 26, 1935, the management issued instructions to employees which pertained to the use of automobiles in the carrier's service and which, among other provisions, contained the following specific provision:

"It should also be understood that the use of an employee's automobile in company service must be duly authorized and that the automobile owner holds casualty insurance policy with the name of the railroad company endorsed thereon as one of the assured."

"Agent E. J. Baker was the regularly assigned incumbent at Union Hill, and Agent L. E. Poynter was the regularly assigned incumbent at Goodrich, both of whom obtained their respective positions through the exercise of seniority under the provisions of the Telegraphers' Agreement.

a full time agency, it is the prerogative of the management to make appropriate changes in the arrangements for taking care of the work. Sometimes the station is closed entirely, and in other cases it is kept open for a few hours of the day, depending upon what arrangements are suitable for the particular conditions. In the case here involved, the conditions were such at two adjoining stations that a full time agency was not justified at either station, but a full time position to serve both stations would take care of the service requirements.

"The situation which arose on the Kankakee Line in April 1935 was nothing new, as similar situations had arisen in territories covered by the Telegraphers' Agreement and had been similarly dealt with."

"As to Article 35: This article has no bearing on the dispute as Articles 12, 20, 24, and 26 clearly provide for changes which may be made during the life of the agreement without involving Article 35. Under those rules, forces may be reduced or increased, the classification or work of positions may be changed, and their rates of pay adjusted if the duties are materially increased or decreased. Article 35 is not susceptible to any such interpretation as the employees seek to apply to it in this instance. It does not in any way limit the right of the management to operate the property economically, either by discontinuing positions no longer necessary or by consolidating positions when no longer necessary on a full time basis.

"If Article 35 does have a bearing in this dispute, it can only be to the extent of requiring the employees to serve thirty days' written notice of their desire to change the rules and the practices that have been recognized thereunder."

OPINION OF BOARD.—In this claim of the General Committee that Agent L. E. Poynter was improperly displaced from his regularly assigned position as Agent-Telephoner at Goodrich, Illinois, on April 17, 1935, by the consolidation of that agency with the station agency at Union Hill, Illinois, various rules from the agreement have been quoted and numerous decisions and agreements have been cited by the parties as having a bearing on the subject at issue.

The basic contention of the General Committee, in its submission is, that this Carrier violated the terms of the agreement between the parties by consolidating the two stations so long as the work continued to exist; and, inasmuch as the positions of Agent-Telephoner had been placed in the schedule, as outlined in the Scope Rule, Article 1 of the agreement between the parties, effective May 16, 1928, and the two positions of Agent-Telephoner which existed at Goodrich and Union Hill prior to April 17, 1935, were specifically designated in the schedule together with the rates of pay, that the Carrier further violated the terms of the agreement by consolidating the two positions without conference or negotiations with the Committee.

The Carrier submits that prior to the date of the consolidation of the two stations becoming effective, or on April 9, a bulletin was issued to the effect that, "effective April 17, 1935, the position of Agent-Telephoner at each Goodrich and Union Hill stations are abolished and a new position is created at Goodrich-Union Hill." The bulletin further specified a rate of 61 cents per hour for the position and an allowance of \$15.00 per month to be added for expense of automobile. It is the contention of the Carrier that the issuance of this bulletin constituted the necessary means of cancelling the provisions of the agreement so far as they affected the two agencies specified, and that this action was further confirmed by the subsequent withdrawal of the bulletin, on April 16, 1935, at the request of a representative of the committee, and at which time arrangements were made for the senior of the two men displaced to be assigned to the consolidated agency.

The Carrier further submits a number of decisions and rulings with respect to consolidation of agencies and particularly refers to the System Consolidation Agreement, effective September 1, 1926, proposed by the several General Chairmen of the New York Central Lines, and other dockets and agreements, in support of its contention to the right to abolish or consolidate agencies. In connection with these cases and the various rulings and decisions cited however, many of which cover conditions and consolidations created by the absorption and merging of other lines and interests, the Board submits that the conditions covered by this instant claim are not to be determined by the action taken in cases where stations have been consolidated through the absorp-

tion or merging of other lines or interests, or for that matter through the varying conditions existing at other points, but that this case, as in the cases cited, must be decided on its merits and without regard to the situations evidenced at other points; and it is on this basis, and this alone, that an equitable decision can be rendered on such disputes as may arise.

In the several submissions which have been made in connection with this claim, the fact is evidenced that while the work at the stations in question had undoubtedly diminished, much if not all of the same character of work formerly performed continued to be done, and many of the requirements for an Agent-Telephoner, as originally negotiated into the agreement continued to exist.

It is not the opinion of this Board that all of the work for which an agency was created must disappear before an agency can be abolished; it is, however, the opinion of the Board that when the Carrier seeks, because of economic or other conditions, to consolidate agencies which have been negotiated into an agreement, such action should only be taken by following the same practice as was evidenced when the agreement was made and when the work and duties of the agency had disappeared to such an extent as to require only a small proportion of the service that was originally contemplated.

In further connection with the conditions evidenced in this instant case, the Board submits that the fact of issuing a bulletin abolishing these positions which had been negotiated into an agreement did not constitute and cannot be considered as negotiations between the parties to the agreement. These agreements are binding contracts between the parties, and where through economic or other conditions, stations that have been negotiated into an agreement are to be consolidated such action should only be taken by following the same orderly process of conference and negotiation as when the positions in dispute were placed in the schedule.

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 employes involved in this dispute are respectively carrier and employes 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 facts of record constitute a violation of the existing agreement between the parties.

AWARD

Claim sustained subject to deduction of income earned in the exercise of claimant's seniority rights during the period at issue and to be determined through negotiations between the parties to the agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 16th day of September, 1937.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 496,
DOCKET No. TE-443**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: New York Central Railroad Company (West)

Upon application of the parties jointly involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The joint statement made as to the desired interpretation reads as follows:

"The only point in dispute is over the word 'claimant's' as used in the Award, and whether this word and the apostrophe (') as placed therein means that but one claimant, viz., L. E. Poynter the incumbent of Goodrich agency, who was displaced, is the only one entitled to reimbursement of the monetary loss sustained, or whether all such employees as were displaced as a result of the Union Hill-Goodrich consolidation are also entitled to any monetary loss sustained. In view of this difference of opinion we are moved to request an interpretation in order to clear up any misunderstanding on this single disputed point."

In the findings on this claim the Third Division of the Adjustment Board held "That the facts of record constitute a violation of the existing agreement between the parties" and an award was rendered "Claim sustained subject to deduction of income earned in the exercise of claimant's seniority rights, etc."

In interpreting the application of the Award, your referee submits that the claim was sustained; not in part but as a whole insofar as it pertains to the points at issue, and outlined in the statement of claim in the original docket and as quoted in the Award.

With respect to the word "claimant's" as used in the original Award and particularly so far as the apostrophe is concerned, your referee submits that somewhere in transit an apostrophe crept in which was not a part of the Award intended, and which was overlooked in its submission. The word in dispute was intended to and should be "claimants'" and is a plural designation of the parties represented in the claim, instead of the possessive and singular designation as originally and erroneously used in the Award.

Referee Arthur M. Millard, who sat with the Division, as a member, when Award No. 496 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of October, 1937.