

**Award No. 955**

**Docket No. TE-956**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Dozier A. DeVane, Referee**

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central Railroad that the duties and responsibilities of the position of ticket seller in the passenger station at Central City, Kentucky, were not abolished in fact upon the position being discontinued by the carrier on October 9, 1938, and the work of the position transferred to the agent-yardmaster to be thereafter performed by him; that the regularly assigned incumbent of the position of ticket seller, E. C. Mason, was improperly removed from his position, and shall be restored thereto and compensated for all wage loss suffered as a result thereof; and that all employees resultantly affected by the improper removal of E. C. Mason from his position, whereby improper displacements were permitted by the carrier, shall be restored to their former positions and compensated for wage loss suffered, including employees on the extra list who were thereby deprived of employment."

**EMPLOYEES' STATEMENT OF FACTS:** "An agreement bearing date of August 16, 1931, as to rates of pay, and November 1, 1931, as to rules, is in effect between the parties to this dispute.

"The position of ticket seller at Central City, Kentucky, passenger station is covered by said Agreement.

"Effective October 9, 1938, the position of ticket seller was arbitrarily discontinued by the carrier and the work of the position transferred to the agent-yardmaster, a position covered by said Agreement.

"Upon the position of ticket seller being thus discontinued, the regularly assigned incumbent thereof was removed and permitted, by the carrier to exercise seniority rights on another position with resultant displacements among junior employees."

**CARRIER'S STATEMENT OF FACTS:** "The positions of agent-yardmaster and ticket seller at Central City, Kentucky, are covered by the provisions of the schedule agreement (page 38) bearing date of August 16, 1931, as to rates of pay, and November 1, 1931, as to rules, between The Order of Railroad Telegraphers and the Illinois Central Railroad Company.

"Due to a decrease in business the carrier abolished the position of ticket seller on October 9, 1938. The ticket work remaining since October 9 has been performed by the agent-yardmaster.

"On December 31, 1938, General Chairman Mulhall filed written protest with Superintendent Kern, contending that the schedule was and is being

circumstance could the claim extend beyond December 1, 1938, 30 days prior to date claim was first filed in writing with the Superintendent as is provided for in Rule 16.

"In various cases before the Board, carriers have taken position that if the employes' claims were sustained it would be impossible to abolish a position covered by schedule agreements. The Board has held that positions covered by agreements can be abolished so long as the work as remains in connection with the position is performed by the class of employee to which the agreement applies. It was these decisions the carrier had in mind when the position of ticket seller was abolished and the work remaining assigned to the agent-yardmaster employed on a schedule position. It will be necessary that we take the position that should the claim in the instant case be sustained it would be practically impossible to abolish any position once it had been established under an agreement for, as we all know, in most cases there is some work remaining after a position is abolished which must be performed by someone. To say this work cannot be assigned to another employee covered by the same schedule would, in effect, place certain restrictions upon the carrier which would for evermore continue in effect a position now covered by schedule agreement on which any work remained. We feel that the members of this tribunal will not take upon themselves the responsibility of continuing in effect all positions covered by schedules on the Illinois Central regardless of business conditions or circumstances surrounding. However, a substantiation of this claim would more or less guarantee the continuance of all schedule positions once they are established under the provisions of the labor contract should any work remain that was being performed on the position and this without regard to the amount of work or length of time necessary in its performance.

"The agent-yardmaster in taking over the work remaining after the ticket sellers' position was abolished violated none of the agreement rules, none of the contractual rights of the telegraphers have been transgressed by the carrier and we therefore request that the claim be declined."

**OPINION OF BOARD:** For several years prior to October 9, 1938, carrier maintained a station office force at Central City, Ky., which included among others an Agent-yardmaster, one ticket seller, and one ticket clerk. All these employees were covered by the Telegraphers' agreement. Effective as of October 9, 1938, carrier abolished the position of ticket seller and distributed the work of the position between the agent-yardmaster and the ticket clerk. Petitioner contends this action of the carrier, in assigning the majority of the work of the position to the agent-yardmaster, was in violation of the terms of the prevailing Telegraphers' agreement.

The record shows that prior to the time the ticket seller position was abolished the agent-yardmaster devoted the greater part of his time to duties in the freight office, and that since the abolition of said position he devotes the greater part of his time to duties at the ticket office. The parties are in disagreement as to whether the work at the ticket office requires the majority of his time but in the opinion of the Board that is not material in this case. In disposing of the dispute the Board will assume the agent-yardmaster spends six hours per day at the ticket office performing work formerly performed by the ticket seller as contended by petitioner.

The record shows, in fact the parties agree, that the agent-yardmaster was in charge of both the ticket office and freight office and is entitled under the Telegraphers' agreement to perform work at each office. He is the highest rated employee in each office, and his duties are not restricted so long as the work he performs is covered by the agreement.

The fact that he had previously spent most of his time doing work at the freight office did not estop carrier from assigning the majority of his time to the ticket office, if it saw fit to do so; and with the reduction in the amount of work performed by the ticket seller, as the record shows had

been occasioned by taking from him the duty of selling L. & N. tickets, carrier had the right to rearrange its force so as to handle the remaining work in the most economical manner, so long as it did not violate any of the terms of the prevailing agreement in doing so. Assuming that one of the two positions could have been dispensed with, obviously the higher rated and paid position could not have been abolished and the work turned over to the lower rated and paid position (See Award 236). The contention of petitioner that the position of ticket seller having been negotiated into the agreement must be negotiated out is also untenable (See Award 601). Nor does the current agreement between the parties contain a rule, such as is found in some other agreements (See Awards 598 and 599) that when a position is discontinued and the duties thereof are reassigned the matter will be handled in conference.

The record shows that the agent-yardmaster is paid a monthly rate of \$295.00 as full compensation for all services rendered, which means that he receives no additional compensation for work performed in excess of eight hours per day. Petitioner contends that this permits carrier to assign this employe to work the two positions requiring him to work twelve to fourteen hours daily. Compare Awards 439 and 896. The difficulty with this contention is that the case was not progressed to this Board on that basis. There is no showing that the agent-yardmaster is required to work more than eight hours per day by reason of the new duties he assumed when the position of ticket seller was abolished, and in the absence of such showing the question is not before the Board in this case.

Petitioner's contention that carrier consolidated two separate offices at Central City is also untenable. The record shows that the agent-yardmaster was in direct charge of both offices and Awards 388, 434, 496, and 556 are not applicable to this case.

As no violation of the Telegraphers' agreement has been shown, the claim must be denied.

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

That the carrier and 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

No violation of the Telegraphers' agreement has been shown.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1939.