

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Baltimore and Ohio Railroad, that the Carrier violated the Telegraphers' Agreement when on September 6, 1931, the Agent at Leckrone, Pa., was relieved and his duties transferred to an employe not covered by said agreement; that the position shall now be bulletined and filled in accordance with Telegraphers' Agreement and at the rate of pay specified therein."

JOINT STATEMENT OF FACTS: "Prior to September 6, 1931, an exclusive agent position was maintained at Leckrone, Pa., at rate of .715 per hour. However, effective September 6, 1931, the incumbent on this position was relieved and the work in connection with the agency service at that point was consolidated and assigned to and has since been performed by an employe of the Monongahela Railway Company who is not included in the Telegraphers' Agreement."

POSITION OF EMPLOYES: "The Telegraphers' Agreement bearing effective date of May 16, 1926, as to wages and July 1, 1928, as to rules, governs in this dispute.

"The position of agent, Leckrone, Pa., established rate of pay 71½¢ per hour, was included in said agreement. Effective September 6, 1931, the incumbent of this position was relieved by the Carrier without the concurrence of the Committee, and the work in connection with the agency service at that point was assigned to, and has since been performed by an employe of the Monongahela Railway Company, an appointive position and not covered by any agreement.

"The Monongahela Railway Station is located approximately 1200 feet from the location of the B. & O. Railroad Station. The present incumbent is performing service for two separate stations. This, we contend, is in itself sufficient cause to support our claim due to violation of the agreement, since this Board has decided similar cases in favor of the employees. Attention is directed to Awards No. 3, TE-24; 233, TE-235; 388, TE-274; 814, TE-838.

"It is further contended that the agency has not been abolished, therefore, the work at Leckrone which was formerly handled by the agent for the Carrier, rightfully belongs to employes holding seniority on the Telegraphers' and Station Agents' roster for that district, and that the Agreement has been violated as result of the Carrier contracting with the Monongahela Railway Company to have its agent perform this work for which it pays \$50.00 per month.

"In 1933 the National Railroad Emergency Act was passed by Congress and this act provided for consolidations and coordinations of railroad facilities and set up a Coordinator of Transportation for this purpose. This act provided for the payment of a displacement allowance for employes displaced by consolidations, as follows:

"7 (b) The number of employes in the service of a carrier shall not be reduced by reason of any action taken pursuant to the authority of this title below the number as shown by the payrolls of employes in service during the month of May, 1933, after deducting the number who have been removed from the payrolls after the effective date of this Act by reason of death, normal retirements, or resignation, but not more in any one year than 5 per centum of said number in service during May, 1933; nor shall any employe in such service be deprived of employment such as he had during said month of May or be in a worse position with respect to his compensation for such employment, by reason of any action taken pursuant to the authority conferred by this title.'

"The Emergency Transportation Act expired June 16, 1936 and a demand was made by employes that the benefits guaranteed by Article 7 (b) be continued. This demand resulted in an agreement, effective June 18th, 1936, between the carriers and their employes providing for the payment of displacement allowance to employes displaced by consolidations of railroad facilities resulting from the joint action of two or more carriers.

"The right of a carrier to consolidate its facilities has been upheld by acts passed by Congress and there is no rule in any of the agreements with the employes of the Carrier prohibiting consolidations of railroad facilities. Furthermore, carriers were not required to pay a displacement allowance to employes displaced by consolidations prior to the enactment of the Emergency Transportation Act of 1933. When this act was passed, railroad employes demanded that it provide for compensating employes displaced by consolidations and Article 7 (b) was included as a result of their demand. This demand and the inclusion of Article 7 (b) in the Act of 1933 was a clear recognition that carriers had the right to displace employes when consolidations were made prior to its enactment without being penalized by such action.

"The attention of the Board is directed to the fact that this consolidation was made in 1931 and was not questioned until 1937. This shows clearly that the employes recognized that the carrier had the right to consolidate its agency at Leckrone with the agencies of another carrier at the time this consolidation was made.

"The carrier was not prohibited by any law in effect, or rule in the Telegraphers' Agreement, from displacing employes, or required to pay a displacement allowance when consolidation of its facilities were made at the time the agencies of the Baltimore and Ohio and Monongahela Railway at Leckrone were consolidated, and holds that it was entirely within its rights in abolishing its agency and arranging for the Monongahela Railway to handle its business at that point. When this consolidation was made, the employe displaced had the right to displace a junior employe, which he exercised, and if the consolidation had been made after the enactment of the Emergency Railroad Transportation Act, any employe displaced would also have been entitled to a displacement allowance.

"The carrier, therefore, contends that this claim is not supported by any rule, law or practice in effect at the time this consolidation was made and respectfully requests that it be declined."

OPINION OF BOARD: The joint submission of the claim and of the facts follows:

"Claim of the General Committee of The Order of Railroad Telegraphers, Baltimore and Ohio Railroad, that the Carrier violated the Telegraphers' Agreement when on September 6, 1931, the Agent at Leckrone, Pa., was relieved and his duties transferred to an employe not covered by said agreement; that the position shall now be bulletined and filled in accordance with Telegraphers' Agreement and at the rate of pay specified therein.

"Prior to Sept. 6, 1931, an exclusive agent position was maintained at Leckrone, Pa., at rate of .715 per hour. However, effective Sept. 6, 1931, the incumbent on this position was relieved and the work in connection with the agency service at that point was consolidated and assigned to and has since been performed by an employe of the Monongahela Railway Company who is not included in the Telegraphers' Agreement."

Prior to Sept. 6, 1931, carrier maintained at Leckrone, Pennsylvania, a one-man station consisting of two box cars—one used as an office, and the other, as a freight house. On that date the agent was relieved and work remaining thereafter, by joint arrangement of Sept. 1, 1931, with the Monongahela Railway Company, was done in the modern passenger and freight station buildings of that company about 1,200 feet distant, the carrier paying to the latter company \$50.00 per month to cover its share of the joint use of said buildings and service in the premises.

This coordination was in line with the national policy of consolidation and coordination of railroads and railway operation established by the Transportation Act, passed by Congress in 1920.

While the action complained of occurred on September 6, 1931, no protest was made or claim filed in the premises until this claim was made by the General Committee of The Order of Railroad Telegraphers on or about June 1, 1937. Under the circumstances in this case, as the claim was first made in 1937, there was no claim pending and unadjusted when the Railway Labor Act was amended on June 21, 1934. The Board has no jurisdiction to consider this belated claim and it must be dismissed.

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 does not have jurisdiction over the dispute involved herein; and

That no grievance or claim was pending and unadjusted at the time that the Amended Railway Labor Act took effect on June 21, 1934, and therefore the Board is without jurisdiction to consider the claim and it will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1940.