

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, St. Paul, Minneapolis & Omaha Railway.

(1) That the Carrier violated the terms of the telegraphers' agreement when, on August 8, 1946, it unilaterally discontinued the position of agent-telegrapher at Knapp, Wisconsin, as the work of the position was not abolished in fact but remained to be performed.

(2) That the Carrier violated the terms of the telegraphers' agreement by permitting or requiring a caretaker and other persons not under the telegraphers' agreement, to perform the agency work of this position commencing August 9, 1946.

(3) That the position shall be restored to the telegraphers' agreement and W. L. Hoepner, who was the regularly assigned incumbent and who was improperly removed from the position at the time it was improperly discontinued on August 8, 1946, and now on leave of absence, shall be restored to his former position as soon as he reports for duty and be paid for any loss of wages, including express commissions, he may suffer from the date he returns to duty and that the senior extra employe available for assignment to the vacancy of this position August 8, 1946, until former agent Hoepner reports and is restored to this position, and not used, shall be likewise compensated for the monetary loss thus suffered.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of August 1, 1944, as to rates of pay and rules of working conditions, is in effect between the parties in dispute.

The position of agent-telegrapher at Knapp, Wisconsin, is included in said agreement, and W. L. Hoepner was filling the position when it was declared abolished by the Carrier on August 8, 1946, permission of the Wisconsin Public Service Commission having been secured by the Carrier to do so.

Many of the duties, formerly performed by the former incumbent, W. L. Hoepner, are being performed by a caretaker and two section foremen, including all work in connection with the handling of express business and the forwarding of messages for the Western Union Company.

and does not make collections for freight arriving on collect waybills, including C.O.D. collections for milk and cream shipments arriving on collect baggage waybills, nor remit same to agent at Menomonie Junction. Neither does he telephone shipping information on forwarded freight shipments and carload orders on company block telephone located in the depot building to the agent at Menomonie Junction or take seal records of inbound car shipments. The carrier's statement that this work is not being performed by caretaker at Knapp is supported by affidavits signed by F. J. Vaughn, Superintendent, Eastern Division (Carrier's Exhibit "C") and B. Hobbick, Caretaker (Carrier's Exhibit "D").

There is no reason for LCL nor carload freight arriving at Knapp, Wisconsin, being billed collect. Knapp is carried in the tariffs as a prepaid station and all freight shipments are so handled. It has been the recognized duty of way freight conductors to make notations on waybills at prepaid stations for upwards of 40 years and probably as long as way freight trains have been operated so that there would be no reason for the caretaker to do this work.

The Railway Express Agency work is, of course, work that may be arranged by representatives of the Express Agency with any person or persons at a given point and performance of such work is not necessarily confined to a station agent nor is such work recognized as railroad station agent's work. As a matter of fact performance of such work by a railroad employe is separate and distinct from his railroad duties.

Reference to employes' representative with respect to compilation of payroll is misleading as all that the caretaker does is to submit a form covering his own service.

Definitely services required of the caretaker at Knapp, Wisconsin are not those of an agent but are such as can properly be required of a caretaker not only in conformity with Public Service Commission's recognition of what constitutes agent's duties, but is also in conformity with recognized and accepted practice since the inception of collective bargaining agreements covering station agents.

It is the position of the railway company that if there is a question as to whether the railway is violating the commission's order (Carrier's Exhibit "B") that, in our opinion, is a matter which must be passed upon by the commission and is one not properly before this Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The General Committee claims that when, on August 8, 1946, the carrier acted to abolish the position of agent-telegrapher at Knapp, Wisconsin the work of the position remained to be performed and that, in fact, it was not abolished but that the carrier permitted and required the caretaker and others, none of whom were under their agreement, to perform the work and thereby violated the terms of the agreement.

While the carrier obtained permission from the Wisconsin Public Service Commission to place the station at Knapp, Wisconsin, on a caretaker basis, that authorization did not give it authority to violate any of the rules of the parties' agreement.

The principles applicable here, under the parties' effective agreement, are corrected stated in this Division's Award No. 731 as follows: "In numerous cases this Board has held that a carrier has the absolute right to abolish any position in an Agreement, provided the duties of the position are in fact abolished. In an equally long line of cases the Board has held that the carrier does not have the right, under guise of abolishing a position, to transfer the duties of the position to someone else not under the agreement."

This is more fully set out in Award 1061 as follows: "The principles which govern the disposition of proceedings of this character have been frequently enunciated by this Board. It is well established that the carriers

have a right to abolish positions included in agreements when there is no longer work to be performed in these positions; but that where work does remain in connection with these positions, such work is subject to the agreement and must be performed by the class of employes to which the agreement applies. In other words, a position is abolished only when the duties incident thereto are in fact abolished; it is not abolished through the mere transfer of those duties, or some portion thereof, to employes not covered by the agreement, and the work involved under such circumstances continues to be subject to the agreement."

The evidence of the General Committee establishes that many of the duties of the agent-telegrapher at Knapp, Wisconsin, and formerly performed by him, were, during the period from August 9, 1946 to April 1, 1947, performed by the caretaker who was not under the parties' agreement, although apparently in a reduced or lesser amount. W. L. Hoepner was the regularly assigned incumbent of the position at the time the carrier attempted to abolish it on August 8, 1946. At that time Hoepner took a leave of absence because of illness and there is nothing in the record to show that he has ever been able to return to work. Based upon the foregoing findings of facts we hold that the carrier violated the rules of the agreement and, in the absence of Hoepner being available to fill the position because of his being on leave due to illness, we find that the senior extra employes were were available for assignment to the vacancy, during the period above stated, should be compensated for the loss they have suffered thereby.

From the record it appears that a change took place in the performance of these duties, or at least a part thereof, commencing with April 1, 1947. To what extent that change affected these duties the record does not disclose. In the absence of such a showing we cannot determine that question. However, this award shall in no way prejudice the rights of The Order of Railroad Telegraphers if, in fact, the carrier continued or continues its violation of their agreement after April 1, 1947.

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 carrier has violated the Rules of the parties' agreement as set forth in the Opinion.

AWARD

Claim sustained as to the senior extra employes available for assignment to the vacancy during the period from August 8, 1946 to April 1, 1947, for any loss they have sustained by reason of the violation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1947.