Award No. 3901
Docket No. TE-3560

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad, that

a) the position of Assistant Ticket Agent, Hoboken, N. J., on the Morris & Essex seniority district, covered by the telegraphers' agreement, which became vacant on October 1, 1945, shall be bulletined and filled in accordance with the appropriate provisions of Article 16 of the telegraphers' agreement, and

b) the employe who is assigned to the position as a result of claim (a) shall be paid the difference, if any, between what he would have earned had he been placed on the said assistant ticket agent position October 11, 1945, and what he has since earned on other positions, plus the allowances enumerated in Article 15-(a) of said telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At page 13 of the above-mentioned agreement, hereinafter referred to as the telegraphers' agreement, there are listed at Hoboken, N. J., the following positions:

Asst. Ticket Agent.....$210.20 per month
Third Ticket Agent..... 199.20 per month

These rates were increased by the amounts involved in the national wage increases of 1941, 1943 and 1946.

Immediately prior to October 1, 1945, these positions were owned and occupied by E. M. Dotten and J. Billington, respectively. Prior to, on and subsequent to October 1, 1945, there was and is in existence at Hoboken, N. J., a position designated by the Carrier as Ticket Agent, not covered by the telegraphers' agreement, which prior to October 1, 1945, was occupied by one J. J. Wade. Effective October 1, 1945, following the retirement of Mr. Wade Mr. Dotten was advanced by appointment to said Ticket Agent position. The Asst. Ticket Agent position previously owned and occupied by Mr. Dotten was declared abolished by the Carrier.

General Chairman—ORT, as outlined in letter of June 12, 1941, quoted above. The balance of the work, all of a clerical nature, was divided among the respective ticket clerks in the same office.

Duties covered in the last three (3) items was work rightly belonging to the Ticket Agent but the former Assistant Ticket Agent assumed these duties as a matter of office routine.

In no case can they be considered assigned duties.

No protest has been made by the Clerks Committee because of the rearrangement of the duties covered in the first five (5) items having been distributed among the ticket clerks without any additional burden to those employes.

POSITION OF CARRIER: It can not be said in this case that the Carrier abolished the position of Assistant Ticket Agent and transferred the duties to someone not under the agreement. The carrier has definitely shown that work under the first five (5) items was purely clerical work and distributed among the ticket clerks, which work had been formerly done by them prior to the establishing of the position of Assistant Ticket Agent. In other words, the work formerly done by the ticket clerks was returned to them. That is the reason the Clerks' Committee made no protest when the position of Assistant Ticket Agent was abolished.

The duties covered in Items 6, 7 and 8 were routine office work which should have been handled by the Ticket Agent. However, the Ticket Agent saw fit to turn this routine work over to the Assistant Ticket Agent. Furthermore, in the absence of the Ticket Agent for any reason the Assistant Ticket Agent took care of whatever details necessary in the office and that practice has been in effect since May 1, 1927. Therefore, it can not be said that because the Ticket Agent permitted the Assistant Ticket Agent to perform duties that rightfully belonged to the Ticket Agent that the Ticket Agent is now performing duties formerly assigned to the position which was abolished October 1, 1945.

The Carrier submits that your Board can not be in position to render a decision in this case without giving the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes an opportunity to present their side of the issue. There is now pending before your Board Docket TE-3458 in regard to the seniority date of E. M. Dotten, the former Assistant Ticket Agent whose position was abolished. The Decision in Docket TE-3458 will have a bearing as to whether or not this case is being progressed to your Board by the proper organization, since both the ORT and BR&SC made claim to the former position of Assistant Ticket Agent, Hoboken, which was abolished October 1, 1945.

This claim should be denied for the following reasons:

(1) Carrier had the right to abolish the position of Assistant Ticket Agent at Hoboken and return to the Ticket Clerks duties formerly performed by them.

(2) The work now being performed by the Ticket Agent is work properly embraced in that position regardless of the fact the former Assistant Agent did assist with some of the work.

(3) The position of Assistant Ticket Agent was not vacated but was in fact abolished October 1, 1945. Therefore, bulletin rules of the Telegraphers' agreement are not applicable.

(Exhibits not reproduced.)

OPINION OF BOARD: Immediately prior to October 1, 1945 there was employed at the Hoboken Station Ticket Office one Ticket Agent not covered by any Agreement; one Assistant Ticket Agent and one-third Ticket Agent covered by the Telegraphers' Agreement; and several Ticket Clerks covered by the Clerks' Agreement. On September 30, 1945 the Ticket Agent retired and the Assistant Ticket Agent was promoted to his position. Concurrently with the

promotion, the position of Assistant Ticket Agent was abolished. Some of the work of the abolished position which was incidental to that of the Ticket Agent was assumed by the Ticket Agent and the remainder was assigned to various Ticket Clerks under the Clerks' Agreement.

The position of Assistant Ticket Agent was placed under the Telegraphers' Agreement by negotiation. The position is specifically excepted from the Clerks' Agreement. When it was abolished, part of the work was given to a wholly excepted position and the balance to ticket clerks within the Clerks' Agreement. It is not shown that the work of the Assistant Ticket Agent had decreased. It was simply the abolishment of a position under the Telegraphers' Agreement and a re-assignment of the work to others not under the Agreement. It was evidently done to secure the performance of the work, or a part of it, at least, at a reduced rate of pay. We have repeatedly held that this may not be done except by negotiation. Awards 385, 631, 637, 736 and 751. The shifting of the work being performed by the Assistant Ticket Agent from one agreement to another seems to have been arbitrarily done without regard to the intent of the Agreement. In any event, arbitrary shifting of work from the employes of one agreement to those of another, other than by negotiation, constitutes a violation of the controlling agreement.

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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.