

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Great Northern Railway that the Carrier is in violation of Article XXXI of the Agreement between the parties effective August 1, 1947, when it fails and refuses to eliminate the position of Assistant Agent at Minneapolis Junction, from the provisions of Article XXX-(c) and NOTE thereto of the aforesaid Agreement, and place such position under all the provisions of the said Agreement, and that this position be now bulletined to our craft as a routine position.

EMPLOYEES' STATEMENT OF FACTS: Telegraphers' Schedule No. 8 effective August 1, 1947, as to rules of working conditions, and September 1, 1947, as to rates of pay, is currently in effect between the parties to this dispute.

"ARTICLE I. JURISDICTION AND SCOPE. This agreement will govern the employment, working conditions and compensation of all Relay Managers, Wire Chiefs, Agents and Assistant Agents, (except as provided for in Article XXX), Agent-Telegraphers, Telegraphers, Operators of Printer (including teletype) or other mechanical telegraph transmission or reception appliances, Telephone Operators (except switch board operators), Ticket Agents, Ticket Sellers, Car Distributors, Assistant Car Distributors, Tower and Train Directors, Towermen, Levermen, Staffmen, Block Operators, Operators of mechanical and/or electrical interlocking, and all others named in the wage scale, including clerical work ordinarily performed in conjunction with their other duties. Occupants of the various classifications mentioned above are hereinafter referred to individually or collectively as employees.

"TELEGRAPHER DEFINED. "Telegrapher", as used in this Agreement, means any employe assigned by proper authority to either telegraph or telephone duties as covered by above scope of jurisdiction." (Underscoring ours.)

"ARTICLE VII-(b). NON-SCHEDULE PROMOTIONS. Vacancies in the position of Train Dispatchers, Supervisory Agents and Assistant Agents listed in Article XXX-(c) will be filled by promotion of employees specified in Article I. The Carrier may select the employees so promoted without regard to seniority.

"In filling positions of Supervisory Agents and Assistant Agents, incumbents of other such positions may be transferred from one posi-

is required to do more or less work that might be called clerical, and supervisory agents or assistant agents are no exception to this rule.

Certainly, there can be no reason why this Carrier should take up the time of your Board by commenting upon the innumerable controversies existing between the Brotherhood of Railway and Steamship Clerks and the Order of Railroad Telegraphers relative to the right of employes coming under Agreements with the latter organization to perform clerical work. Your files contain many such and, as previously stated, it is not our intent in this case to hold for or against either. The important thing from the Carrier's standpoint is for the incumbent of the position to be qualified and willing to completely perform the duties of the position and for the Carrier, due to its supervisory nature and its relative importance, to have the free hand accorded under agreements with both the Brotherhood of Railway and Steamship Clerks and the Order of Railroad Telegraphers in filling it from the ranks of the organization whose contract may be considered controlling by your Board based upon the facts.

Should any dispute as to facts arise in the handling of this case or that covered by your Docket CL-4080, the representative of the Carrier is perfectly agreeable to joining with the representatives of both organizations in making a 3-way joint investigation for the purpose of eliminating such dispute.

In closing, the Carrier desires to reiterate its request that this case and that covered by Docket CL-4080 be considered concurrently by your Board and that all matter submitted in each be made a part of the other, since, as previously pointed out, it should appear obvious that only by so doing can awards be rendered in both of these cases without the danger of such awards conflicting.

OPINION OF BOARD: The Organization contends that the Carrier violated the current Agreement when it refused to eliminate the position of Assistant Agent at Minneapolis Junction from the provisions of Article XXX-(c) and place it under all provisions of the contract.

Applicable portions of the Agreement provide:

"The provisions of this schedule will not apply to Agents whose duties are supervisory and who do not perform routine office work, except to the extent shown in NOTE below, nor will the provisions of this schedule apply to the small non-telegraph stations, (except where they are now included in the agreement) which, on account of the varying character and extent of their work and responsibilities, cannot be intelligently treated as a class. The following agencies are supervisory and no routine office work is performed by the Agent: * * * Minneapolis Jct. (including Asst. Agent) * * *." Article XXX-(c), current Agreement.

"Should a position classified in this schedule as supervisory be changed to a routine position, it will then be eliminated from the provisions of Article XXX-(c), and will revert to and be governed by all the other provisions of this schedule. Should a position now governed by all the other provisions of this schedule be made supervisory, it will be added to Article XXX-(c). Transfers of any position to or from the provisions of Article XXX-(c) will be made only after conference and agreement with employes' representatives." Article XXXI, current Agreement.

The record discloses disagreement between the Carrier and the Organization as to whether the position of Assistant Agent at Minneapolis Junction is a supervisory or routine position. The facts are that the position has been listed under Article XXX-(c) in every agreement commencing with that of April 1, 1919, eight in all. There has been no change in duties of the position since the last agreement was negotiated, effective August 1, 1947, in which the position was listed under Article XXX-(c). The claim that the position was never a supervisory one and that it was listed as such because of a misunderstanding of the facts is not a tenable one. All negotiations and oral understandings are merged in the agreement as made. We must, therefore,

consider the position as supervisory as of August 1, 1947, because the Agreement itself is final on that question.

The Organization urges that as the position of Assistant Agent at Minneapolis Junction is no longer supervisory, that it should be taken from under Article XXX-(c). Assuming for the sake of argument that the position is no longer supervisory, it can be eliminated from Article XXX-(c) by the method stated in Article XXXI. The last sentence of that rule reads: "Transfers of any position to or from the provisions of Article XXX-(c) will be made only after conference and agreement with employees' representatives." Consequently, the only way a position can be removed from Article XXX-(c) is by agreement between the Carrier and the Organization. No agreement having been reached, the contract determination that the position is supervisory must prevail. The remedy, if the Organization is correct, is by negotiation as Article XXXI requires. Inability to successfully negotiate where agreement of the parties is required, does not constitute interpretation, nor empower this Board to decide an issue which the parties have retained unto themselves. The claim is not valid.

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 Employees involved in this dispute are respectively carrier and employees 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.