

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 Company, that:

(1) The position of agent-operator at Hubbardsville, New York regularly assigned to W. L. McKie, and the agent-operator position at Earlville, New York, regularly assigned to R. F. Reynolds, which were arbitrarily declared "abolished" and consolidated into one agent-operator position under one agent by dividing his time between the two, effective October 27, 1947, were not abolished in fact, or at all;

(2) The regularly assigned incumbents of these two positions who were thus improperly removed from their assigned positions shall be restored thereto and be compensated in full for all monetary loss resulting from the Carrier's arbitrary action in removing from their regular assignment, and also paid the expense allowance and travel time incurred under Rule 15 (a) and Article 15 of the Telegraphers' Agreement while working on other positions, until restored to their regular assigned positions, and,

(3) All other employees who were adversely affected by reason of these improper acts of the Carrier shall be made whole for any loss in earnings, and expenses and travel time incurred under Rule 15 (a) and Article 15, through being improperly displaced.

EMPLOYEES' STATEMENT OF FACTS: An Agreement, referred to herein as the Telegraphers' Agreement, bearing effective date of May 1, 1940 by and between the parties is in evidence. A similar agreement, superseding the May 1, 1940 agreement, effective November 1, 1947 is likewise in evidence. Articles 8 and 24 of the latter agreement bear an effective date of March 1, 1945. Copies are on file with the National Railroad Adjustment Board.

The May 1, 1940 Agreement (Page 29) lists at Hubbardsville and Earlville, respectively:

"Agent-operator .68 per hour*

"Agent-operator .71 per hour*

*these rates progressively increased to \$1.21 and \$1.24 on hour.

NOTE: Claims for travel time and/or expenses will be promptly filed on proper company forms by the employe or his representative."

The above quoted rules apply to employes holding temporary or regular assignments, who may be required to do relief work in case of emergency. Neither W. L. McKie or R. F. Reynolds performed relief work within the meaning of the above rules.

Agency consolidations is not an arrangement which is new on this property. It was the practice long prior to the May 1, 1940 Agreement to set up part time agencies under circumstances similar to conditions which prevailed here. Moreover the closing of the agency at Hubbardsville was done under order of the New York Public Service Commission and, of course, such order has the force of law.

At the present time, the Carrier has approximately ten locations where the Agent is regularly assigned to one station and covers incidental work at another station as ordered by State tribunals. The Employes have recognized such arrangements as necessary.

As seen, the Carrier has been ordered by the Public Service Commission of the State of New York to abolish the position at Hubbardsville and retain the agency at Earlville, and such order has the force of law. The consolidating of agencies in this manner has been a recognized practice not only on this property, but on other railroads where like circumstances exist. Agency consolidations were recognized by The Order of Railroad Telegraphers during the negotiations of the present agreement.

The National Mediation Board in Interpretation No. 21, supported the Carrier in respect to positions to be placed in the Wage Schedule of the November 1, 1947 Agreement.

The position of Agent-operator at Earlville-Hubbardsville will be placed in the wage schedule, insofar as the Carrier is concerned, when The Order of Railroad Telegraphers is prepared to further negotiate any additional positions which the parties desire and agree to include in the Wage Schedule.

This claim has been handled partially through exchange of correspondence on the property, negotiations, and services of the National Mediation Board.

The claim is without merit and should be denied in all respects.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that agent-operator positions at Hubbardsville, New York, and Earlville, New York, were listed in the Telegraphers' Agreement effective May 1, 1940. On October 27, 1947, Carrier established and advertised an agent-operator position as Hubbardsville-Earlville. Claimant McKie, the occupant of the Hubbardsville position bid in the joint position and performed work at both Hubbardsville and Earlville Stations. Claimant Reynolds, occupant of the Earlville position, exercised displacement rights on a position at Norwich. On June 20, 1948, claimant McKie bid in the Earlville position following the abolishment of the Hubbardsville-Earlville consolidated position.

Many awards of this Division hold that a joint agency may not be substituted ex parte for two agencies called for in the applicable agreement. See Awards 388, 3364, 2659. This requires a holding that the establishment of the joint-agency position on October 27, 1947, was in violation of the Telegraphers' Agreement.

The record shows that claimants performed no relief work within the purview of Rules 15 and 15 (a) during the period covered by the claim. Consequently, no basis exists for the payment of expenses as provided in these rules.

The record also discloses that the position at Hubbardsville was abolished and the Earlville position restored on July 5, 1948. The Carrier was within its

rights in abolishing the Hubbardsville position at this time. The establishment of an eight-hour position at Earlville without requiring the occupant to work any part of it at Hubbardsville was within the controlling rules. Consequently, no valid claim exists on and after July 5, 1948.

FINDINGS: The Third Division of the Adjustment, 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.

AWARD

Claim (1) sustained. Claim (2) sustained as to compensation claimed from October 27, 1947 to July 5, 1948. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 17th day of October, 1949.