

Award No. 4972

Docket No. TE-4874

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD**

STATEMENT OF CLAIM: (1) That the Carrier violated the terms of the memorandum of agreement of February 4, 1938, when at the close of business on January 22, 1949, it declared abolished the position of ticket agent at the Central Massachusetts Station, Hudson, Massachusetts, and thereupon assigned the duties of such position to the freight agent located in the Hudson Marlboro Branch station building, approximately one-half mile from the Central Massachusetts Station, thus consolidating the two positions in violation of said agreement; and

(2) That the Carrier shall restore the ticket agent position in the Central Massachusetts Station, allegedly abolished at the close of business on January 22, 1949, and return to such position the employee who was regularly assigned thereto at the time it was declared abolished.

JOINT STATEMENT OF FACTS: Effective Saturday, January 22, 1949, the position of Ticket Agent and Operator at Hudson, Mass., (Central Massachusetts Branch) was abolished, and the Freight Agent located at Hudson, Mass. (Marlboro Branch) was required to go to the Central Mass. Branch station, sell tickets which was previously done by Ticket Agent Burris whose position was abolished.

POSITION OF EMPLOYEES: Effective February 4, 1938 an agreement was made with the then Assistant to General Manager, B&M Railroad, Mr. A. H. Slader. This agreement reads as follows:

"First—The management agrees that positions covered by the Telegraphers' Agreement of March 18, 1927 will not be consolidated hereafter, where to do so requires an employe coming within the scope of that agreement to divide his time between two stations, where to do so results in a reduction of force of those covered by the Telegraphers' Agreement referred to, unless it is done by negotiation between the accredited representative of the organization and the proper representative of the management.

It is understood, however, that nothing in this agreement shall be construed to prevent the consolidation of two or more positions coming within the Telegraphers' Agreement at the same station. (Emphasis ours.)

"Second—The management agrees, effective January 21, 1938, to adjust rates of pay of positions covered by the Telegraphers' Agreement of March 18, 1927, by allowing an amount not exceeding \$15.00 per day. This fund to be distributed as mutually agreed to between

"A place designated on the time table by name."

In the Employes' Time Table Hudson is shown as a station. It is also shown in the public time table. In the Telegraphers' schedule effective August 9, 1944, Hudson is shown in the wage scale as having an Agent-Operator and a Ticket Agent-Operator. There are many other stations shown in the wage scale with the same or similar positions. Usually, these occur at stations where there are both freight and passenger service. At such stations, it is customary to handle the freight business in one building and the passenger business in another, with separate tracks serving each building. They are parts of the same station.

At Hudson, the Agent at the freight house had general supervision of both services. He signed the payrolls and, when necessary called on the ticket agent for help at the freight house. Both the Agent and the Ticket Agent were on the same seniority roster of Telegraphers. The station is operated as a station on the Terminal Division of the Railroad. It is clear that Hudson, comprising a freight building where there is no passenger service and a passenger building where there is no freight service, is one station and the action of the Carrier in abolishing the Ticket Agent's position was merely a permissible reduction in force.

The Agreement of February 4, 1938, on which the claimant bases his claim, must be examined in the light of the events leading up to it. Attached hereto as Carrier's Exhibits "A" and "B", are two letters from former General Chairman H. L. Jones to former Assistant General Manager A. H. Slader, one dated November 30, 1935, the other dated June 5, 1936. The term "Station" as used in the Agreement is synonymous with "Agencies", as that term is used in Third Division Award 388 which gave rise to the original claims, namely, positions of equal rank at separate and distinct stations.

The Agreement, by its terms, was "made for the purpose of disposing of grievances and claims arising out of consolidation of stations and/or having one Agent cover work at more than one station". This reference to grievances and claims connects the agreement with the type of consolidation referred to in Exhibits "A" and "B". The Carrier agreed not to consolidate two positions of equal rank at separate and distinct locations. The Carrier did not agree and the Organization did not demand that the Carrier would forego its right to reduce the forces in one agency at one location. Hudson was, and is, one agency under the supervision of an Agent-Operator. Reporting to the Agent was a Ticket-Agent-Operator. When the work at that agency diminished almost to the vanishing point, two men were not needed. The position of Ticket Agent was abolished, leaving the Agent to do all the work at that Agency with such clerical help as he might need.

The claim is not supported by the Agreement of February 4, 1948.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 22, 1949, the position of Ticket Agent and Operator at Hudson, Massachusetts, was abolished and the freight agent at Marlboro Station was required to go to the Central Massachusetts Branch Station and sell tickets. This work was formerly performed by the occupant of the abolished position. The Organization contends that this was a violation of the Agreement.

A supplemental Memorandum Agreement under date of February 4, 1938, provided in part as follows:

"First—The management agrees that positions covered by the Telegraphers' Agreement of March 18, 1927 will not be consolidated hereafter, where to do so requires an employe coming within the scope of that agreement to divide his time between two stations, where to do so results in a reduction of force of those covered by the Telegraphers' Agreement referred to, unless it is done by negotiation

between the accredited representative of the organization and the proper representative of the management.

It is understood, however, that nothing in this agreement shall be construed to prevent the consolidation of two or more positions coming within the Telegraphers' Agreement at the same station."

It is clear that the determination of this dispute depends upon the status of the points known as Central Massachusetts Branch Station and Marlboro Branch Station. If they are in fact a single station, the position of the Carrier is correct; if they are in fact two stations within the purview of the Memorandum Agreement of February 4, 1938, then the position of the Organization is correct.

The record shows that sometime prior to the execution of the Memorandum Agreement, two operating divisions of the Carrier maintained tracks into Hudson. Each maintained its own freight and passenger station; one on one side of the city and one on the other. When the operating divisions were consolidated, the Central Massachusetts Branch freight office was consolidated with the Marlboro Branch freight office, resulting in the transfer of the work of the former to the latter. In a similar manner, the passenger station work of the Marlboro Branch passenger station was transferred to the Massachusetts Branch passenger station. This situation existed until January 22, 1949, when the Carrier purported to abolish the agency position at the Central Massachusetts Branch passenger station and required the freight agent at Marlboro Branch to perform the work at both points.

Under the circumstances shown, the Central Massachusetts Branch and the Marlboro Branch were two separate stations within the meaning of the Memorandum Agreement. This being true, the agent at Marlboro Branch could not properly be required to divide his time between the two stations except by negotiation with the Organization.

Consequently the rules require that the position of Ticket Agent at Central Massachusetts Station be restored and that the employe entitled thereto be assigned the position, unless the violation of the Memorandum Agreement has been otherwise corrected during the pendency of the dispute.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.