

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

- (a) The Carrier violated the provisions of the Telegraphers' Agreement when, on September 15, 1949, it unilaterally discontinued the position of Agent-telegrapher at Mallory, New York, as the work of the position was not abolished in fact, but remained to be performed.
- (b) The Carrier violated the provisions of the Telegraphers' Agreement by permitting or requiring, (1) an employe on another railroad, (2) a caretaker; and (3) other persons not under the Buffalo and East Telegraphers' Agreement to perform the work of this position commencing September 15, 1949.
- (c) The work shall be restored to the Telegraphers' Agreement at Mallory and R. G. Herrick, who was the regularly assigned incumbent and who was improperly removed from the position at the time it was improperly discontinued on September 14, 1949, shall be restored to this position and paid for all loss of wages, plus travel and waiting time and other necessary expenses that were incurred; and
- (d) All other employes who may have been adversely affected as a result of this improper action on the part of the Carrier, shall be restored to former positions and paid any loss of wages they may have sustained, plus travel and waiting time and any other expenses incurred because of the discontinuance of the position of Agent-telegrapher at Mallory, New York.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of July 1, 1948, as amended September 1, 1949, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At Mallory, New York, on the St. Lawrence Division there is a station for the handling of passenger, freight and general railroad business. The position of agent-telegrapher at this point has been included in the Telegraphers' Agreement for many decades, being filled by Mr. R. G. Herrick at the time it was declared abolished by the Carrier on September 15, 1949, permission of the New York State Public Service Commission having been secured by the Carrier to do so, under certain circumstances.

is made; the Carrier declares that the designation 'certain of its Coal Chute Foremen, Coal Chute Operators, Coal Chute Laborers, Pumpers, Crossing Watchmen, and Bridge Tenders' is too general, vague and indefinite. The Board finds that there is merit to this contention, in that the record is not, in fact, in such a condition as to make possible a proper analysis and determination of the issues involved in the claim; actually, the issues involved in the claim cannot be made out clearly from the record as it now stands. In Award 2125 this Board stated that it should not attempt to decide claims of employees who were not before the Board and whose exact status was not known."

Again in Award No. 4305 the Board rendered an opinion reading in part as follows:

"The claims for 'other similarly affected employees' must be denied. The only claims properly before the Board for its consideration are those of named parties for specified dates and locations. In Award 906 this Board said: 'The claim in this case should be restricted to the employees specifically named therein, since the correspondence shows that they were the only ones discussed in conference.'"

CONCLUSION

The Carrier has shown conclusively that Mallory station was made a non-agency under orders issued by the Public Service Commission of the State of New York; that the agency having been abolished and jurisdiction over Mallory vested in the Agent at Central Square, no work remained at Mallory and no violation of the Telegraphers' Agreement has occurred.

(Exhibits not reproduced.)

OPINION OF BOARD: Pursuant to authority granted by the Public Service Commission of the State of New York, the position of agent-telegrapher was abolished at Mallory, New York; the station made a non-agency station, and placed under the jurisdiction of a joint agent of Carrier and another line at Central Square, New York, 3.7 miles distant. The joint agent held seniority on the foreign line.

The position at the location in question is listed in the Agreement between the parties, effective January 1, 1940, at page 47. The Organization recognizes, however, that this Division of the Board has declared in numerous Awards that the Carrier has an absolute right to abolish any position provided the duties of the position are in fact abolished (Award 255). The Division has also held that if the duties are not abolished, the transfer of such duties to another seniority district off or on Carrier's lines can only be done by negotiations and agreement (Award 4076, 4653). The Organization contends this to be a case of the latter class.

Carrier admits that the occasional shipments destined to Mallory after September 15, 1949, did require someone to do the work formerly performed by the agent-telegrapher at Mallory. It attempts to escape the implications of this admission by stating the handling employee was a joint employee of the New York Central and the foreign line. From the Organization's standpoint, the pertinent fact is that such person, while a telegrapher, was not subject to the same Agreement nor within the same seniority district as that of the employee whose work he assumed; hence, seniority rights on the St. Lawrence Division of the New York Central Lines were affected adversely by Carrier's actions, and the agreement of the Organization was called for. This case is to be distinguished from that subject to Award 1305 and relied upon by Carrier because there, with the abolition of the agency, both passenger and freight service were abolished at the point involved. Not so here. Both continued even though upon a steadily declining scale. This Division early suggested the means of solution to cases such as this (Award 434).

Carrier considers any possible violation of established rules but trifling and urges the application of the "de minimis" rule. The rule contended for has rare justification for application in a case like this where treasured seniority rights are involved.

Carrier would seem to find solace in the order of the State regulatory agency. In Award 3738, we ruled such authorization did not give the Carrier authority to violate any of the rules of the parties' Agreement. Despite the form of the instrument, the action of that agency dated July 27, 1949, was, by its terms and intent, permissive as cursory examination of the Exhibit will show.

Carrier later in its submission sets forth an exchange of correspondence occurring in December 1939, covering combination agencies, wherein it is stated:

"* * * no further such combinations will be made without securing permission from the Public Service Commission or consulting with the Telegrapher's Organization."

Accordingly, it excuses itself from the necessity of consulting the Organization in view of permission received from the Public Service Commission. The point lacks merit (1) because the language of the letter is subject to a contrary construction and (2) because it predates the current formal Agreement between the parties.

We are without authority to order the Carrier to reestablish this position as requested by the Organization. The Carrier may be able to avoid violence to the Agreement by assigning the work in a manner that will be in conformity therewith (Awards 3906, 4044 and 4987), and is entitled to that opportunity.

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 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

That the Agreement has been violated.

AWARD

Paragraph (a) and item (1) of paragraph (b) of the claim are sustained. In view of the foregoing it is not necessary to give consideration to Items (2) and (3) of paragraph (b).

Paragraph (c) is denied insofar as restoration of position is involved, but Agent-Telegrapher Herrick shall be paid for any loss of wages, travel, and waiting time, together with other reasonable and necessary expenses incurred by him by virtue of the unilateral discontinuance of the position occupied by him at Mallory, New York, such liability to continue until conformance with the Opinion hereinabove stated.

Paragraph (d) of the claim is denied for reason of indefiniteness.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of June, 1951.