

Award No. 5507
Docket No. TE-5488

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, New Haven and Hartford Railroad that:

(1) The terms of the agreement between the parties have been and are being violated when, effective November 7, 1949, the Carrier arbitrarily declared abolished the first trick signal station operator position at Kingston, Rhode Island, and consolidated said position with the agent's position at the same location, requiring the incumbent of the agent's position to divide his time between the signal station and the agency station during his tour of duty, resulting in the suspension of work during regular hours on both positions.

(2) The employees, including the regular assigned relief employees, who were improperly removed from their assignments at the Signal Station, Kingston, Rhode Island, and all other employees resultingly displaced from their assignments, shall be restored thereto and be compensated in full in accordance with the provisions of Article 29 for each day beginning with the date their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until they are restored to their respective assignments; and,

(3) All other employees who were deprived of work as a result of this violative act shall be paid for all wages lost.

EMPLOYEES' STATEMENT OF FACTS: An agreement, referred to herein as the Telegraphers' Agreement bearing effective date of June 15, 1947 as to rates of pay and working conditions is in effect between the parties to this dispute. Copies are on file with the National Railroad Adjustment Board.

Prior to November 7, 1949, the Carrier maintained at Kingston, Rhode Island four positions covered by the Telegraphers' Agreement. These positions were shown in the agreement at page 46 as follows:

formed by employes covered by the same Agreement, there must be a total abolition of all tricks, and trick positions, and the work thereof, at the particular point involved. Carriers do not, and cannot efficiently, operate their lines in such manner, and we do not believe that it was ever contemplated, by any party to the controlling Agreement, that they would be required to do."

CONCLUSION: Carrier submits the decisions of the Board, particularly Award 911, warrant the assignment of duties involved in this case. It therefore requests that the claim be denied.

OPINION OF BOARD: In the wage scale of the Agreement between the parties effective September 1, 1949, appears the following:

Location	Occupation	No. of Positions	Rates Hourly or Monthly With *
Kingston	Agent	1	\$1.771
Kingston	S. S. Operators	3	1.57

On November 3, 1949, effective November 7, 1949, the Carrier unilaterally discontinued the position of S. S. Operator on the first trick and assigned the duties of such Operator to the Agent, whose hours of work were changed to cover the hours of the former first trick S. S. Operator.

In our Award No. 434, between the same parties, we held that to eliminate or combine positions, which have been negotiated into the agreement, the Carrier is obligated to follow the procedures established by the rules for the modification of the agreement except when such action is due to the elimination of the work and duties for which the position was created or to a change in the service required since the position was negotiated into the agreement.

In this case the work and duties of the first trick S. S. Operator were not eliminated but were admittedly assigned to the Agent, and there is no evidence of any change in the services required from September 1, 1949 to November 3, 1949. The Carrier exhibited and relied upon evidence of a decline in business which however indicates that such state existed and was known prior to September 1, 1949 as well as between then and November 1949. It also exhibited and relied upon evidence of the seasonal character of the work requirements at Kingston but such fact was equally evident in prior years.

The Carrier contends that our Award No. 911 is controlling of decision here but in that case there were very substantial changes in the services required between the negotiations of the position of Towerman into the Agreement and the abolition thereof.

Moreover Article 29 of the Agreement between the parties provides in part as follows:

"Regularly assigned employes will not be required to work at other than their regular positions, except in cases of emergency."

Here the position of Agent was not changed to Agent-Operator so the Agent was obviously required to work at other than his regular position commencing November 7, 1949.

As we held in Award No. 5375, among many others, we should not direct the reestablishment of the position involved so that Carrier may have the opportunity to reassign the work in conformity with the agreement, negotiate thereon with the Organization or act in accordance with subsequent changes.

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

That the Carrier violated the agreement.

AWARD

Claim sustained except the request for restoration of the position and assignments thereto which is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.