

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY (Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad Company, Eastern District, that:

(1) The Carrier violated the terms of the Agreement between the parties when, on July 23, 1949, it unilaterally and arbitrarily declared abolished the position of agent-telegrapher at Alda, Nebraska, without in fact abolishing the work of the position, and concurrently therewith transferred and assigned work of the position to employees of other crafts or classes holding no rights to perform work covered by the said agreement; and

(2) As a consequence of its violative action, the Carrier shall now be required to return the incumbent, M. L. Hensley, to his regular assignment of agent-telegrapher at Alda, Nebraska, and reimburse him for any and all monetary losses suffered, including expenses and other benefits to which entitled under Rule 11 of this agreement; and

(3) Any and all other employees adversely affected by reason of this violative action shall be returned to their former positions and be reimbursed for any and all monetary losses suffered, including benefits accorded under Rule 11.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement as to rules governing working conditions and rates of pay, bearing effective date November 1, 1947, in effect between the parties to this dispute.

The position of agent-telegrapher at Alda, Nebraska, rated \$1.19 per hour¹ is covered by the Agreement between the parties and listed in the wage scale at page 5. This position has been covered by said Agreement, continuously since August 1, 1892 until vacated (not abolished) on July 23, 1949. It is a one-man station on the Union Pacific Railroad located approximately 8 miles west of Grand Island, Nebraska.

At the time the Carrier declared this position abolished, M. L. Hensley was the regularly assigned incumbent thereof, with assigned hours 7:15 A. M. to 4:15 P. M. one hour out for lunch, six days per week.

¹Not including national increases applied subsequent to November 1, 1947.

It is hereby affirmed that all information and data herein set forth have been furnished to, discussed with, or are known to the Employees' Organization or the Claimants.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is concerned with a claim that the respondent Carrier violated its Agreement with The Order of Railroad Telegraphers when the position of agent-telegrapher was abolished at Alda, Nebraska on July 23, 1949. It is contended by the petitioner that the Carrier abolished the position at Alda without in fact abolishing the work of the position. It is contended further that such work has since July 23, 1949 been performed and is now being performed by persons having no contractual right to the work.

The petitioner argues that all work performed by the former agent-telegrapher at Alda was work belonging exclusively to the Telegraphers' Organization as provided in the Scope Rule.

This record reveals a situation where business had declined to the point where the Carrier believed it necessary to discontinue the Alda position at issue. Accordingly, an application was filed with the Nebraska State Railway Commission asking approval for the discontinuance of the Agency. In due course the Commission issued its order granting the Carrier's request. Shortly thereafter the Carrier proceeded to make effective the discontinuance of the Agency, which action gave rise to the instant dispute.

As shown above, the petitioner relies upon the proposition that the work previously performed by the agent-telegrapher at Alda continues to exist and is performed presently by employees of other crafts.

The record shows beyond dispute that the duties of the agent-telegrapher at Alda had declined until there was not sufficient work remaining to occupy anywhere near the full time of the incumbent. The Carrier asserts that the remaining duties would not require more than one hour per day to perform. While the petitioner challenges this assertion, no real evidence is submitted to disprove the Carrier's statement on this score.

It is admitted that since the discontinuance of the position some duties, mostly clerical, remain to be performed from the station in Grand Island. However, the petitioner has not shown that any of these can be said to be historically exclusive duties of the Telegrapher craft.

This Division has rendered a substantial number of Awards dealing with Carrier actions in discontinuing such positions as the one at Alda. These Awards have generally recognized the right of the Carrier to discontinue a position where the work of that position declines to the point where a substantial part of the employee's time is not occupied with the duties of the position. Awards 439, 4759, 4385, 5127, 5283, 5318. Evidence of record here certainly shows that there was such a decline in duties at Alda.

There is no showing in the record that any of the remaining duties at Alda can be said to be duties which Telegraphers have the exclusive right to perform on the basis of either the Scope Rule or tradition and practice on this property.

Under these circumstances, and in view of the holdings of the cited Third Division Awards, an affirmative Award is not justified.

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 Carrier did not violate the contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of April, 1952.