

**Award No. 6204**

**Docket No. TE-5766**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Curtis G. Shake, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad Company that,

- (1) The Carrier violated the provisions of the current Agreement between the parties when, acting alone, it declared abolished the position of Operator-Clerk at Dunkirk, Indiana, August 31, 1949, and transferred the work of the position of an employee not under the Telegraphers' Agreement.
- (2) The position of Operator-Clerk shall be restored to the Telegraphers' Agreement and the former incumbent of that position restored thereto and compensated for any loss of wages and expenses incurred by reason of the violative act of the Carrier; and
- (3) All other employees adversely affected as a result of this violative act of the Carrier shall be compensated for any loss of wages and expenses incurred thereby.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to August 31, 1949, Operator-Clerk position, Dunkirk, Indiana, rate of pay \$1.265 (with adjustments to be added) per hour, was a part of the Wage Scale of the Telegraphers' Agreement and filled by Operator K. L. Whetzel who had been assigned this position on advertisement, and whose seniority standing was 9-14-46 on the Telegraphers' Roster.

Under date of August 30, 1949, Assistant Trainmaster-Division Operator, Logansport, Indiana, Superintendent headquarters, notified Operator-Clerk K. L. Whetzel, in writing, that effective 11:59 P. M. August 31, 1949, position of Operator-Clerk, Dunkirk, Indiana, was abolished.

Supervising Agent of the former Logansport Division, on September 7, 1949, advertised a clerical position, Symbol F-68-F, as a permanent position at Dunkirk, Indiana, and under date of September 14, 1949, awarded the position under the agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, to K. L. Whetzel, who was displaced as a result of the arbitrary abolishment of the

that is primarily clerical to the exclusion of clerical employees, or that the Carrier would be required to use three men to perform the work of two.

The Carrier would also again point out to your Honorable Board that the controversy is essentially a dispute between two classes or crafts of employees which can only be properly resolved by active participation of all of the parties concerned. It is, therefore, respectfully urged that all of the interested parties be given notice and an opportunity to participate in the hearing where this matter is considered.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

**CONCLUSION**

The Carrier has shown that the applicable Agreement was not violated when the clerical work of the abolished position was assigned to clerical employees, and the Claimants are not entitled to the compensation which they claim.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to August 31, 1949, one Whetzel occupied the position of Operator-Clerk at Dunkirk, Indiana. The position had been under the Telegraphers' Agreement since 1929, and Whetzel held seniority under that Agreement dating from September 14, 1946.

Effective August 31, 1949, the position of Operator-Clerk at Dunkirk was abolished by the Carrier. On September 7 it advertised clerical position F-68-F at Dunkirk, which had theretofore been part time, on a permanent basis. Since no bids were received from any employee holding seniority under the Clerks' Agreement, the position was on September 14 assigned to former Operator-Clerk Whetzel. The Organization says that the effect of the Carrier's action was to remove the position of Operator-Clerk from the coverage of the Telegraphers' Agreement and to deprive Whetzel of his seniority rights under that contract.

The Carrier says, on the outset, that this Board is without jurisdiction of the Claim because no notice of this proceeding has been given the Clerks' Organization. This contention is rejected for the reasons more fully elabor-

ated in Award No. 6203. The Clerks' Organization has not asked to intervene and whether notice is necessary to afford due process as to it is of no concern to the Carrier, as we interpret the present holdings of the reviewing courts.

The Carrier also asserts that prior to August 31, 1949, it maintained at Dunkirk, a comparatively small station, an agent, two clerks and an operator-clerk; that the telegrapher work performed by the operator-clerk had decreased to the point where it amounted to approximately 30 minutes per month; and that it was amply justified in transferring the telegrapher work to its block operator at Red Key and the remaining clerical duties to the existing clerical workers at Dunkirk.

The Organization denies that all of the telegrapher duties were transferred to Red Key, but we do not find it necessary to reconcile the facts on that point. We think, in any event, the Carrier was in error when it concluded that the transfer of the telegrapher duties to Red Key justified its assigning the remaining functions of the Operator-Clerk's position at Dunkirk to an employe not covered by the Telegraphers' Agreement. This is not a case where the work incident to a position had decreased to a point justifying its abolishment. The controlling fact is that the position of Operator-Clerk at Dunkirk, with its incidental duties of a clerical nature, had been under the Telegraphers' Agreement for many years. These duties were not dispensed with; they were merely transferred to an employe not covered by the Agreement. That result could only be accomplished by negotiation.

**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 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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.

#### DISSENT OF CARRIER MEMBERS

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The dissent we made in Award No. 6203 is equally applicable here.

In addition, the majority Opinion failed to distinguish between the factual situations in Award No. 6203 and this Claim. The former Award

involved a claim before the Third Division in which the carrier raised the defense that the claim should be dismissed because of the Board's failure to give notice to the Sheet Metal Workers and Electrical Workers represented by System Federation No. 30. The classes of employes represented by the latter organization normally progress their claims to the Second Division. Thus, the situation was very similar to the situation involved in Award 5702 in which Judge Wenke held:

"\* \* \* groups or classes of employes or the organization which represents them, of which a division of the Adjustment Board is not given jurisdiction, are neither necessary nor proper parties to a dispute properly before it arising out of an interpretation and application of an agreement between a class of employes and a carrier of which the division does have jurisdiction."

In this Award the factual situation involved only employes and organizations who are subject to the jurisdiction of the Third Division, therefore Award No. 5702 did not establish any precedent to support the majority holding.

On the merits the majority states that:

"We think, in any event, the Carrier was in error when it concluded that the transfer of the telegrapher duties to Red Key justified its assigning the remaining functions of the Operator-Clerk's position at Dunkirk to an employe not covered by the Telegraphers' Agreement. This is not a case where the work incident to a position had decreased to a point justifying its abolishment. The controlling fact is that the position of Operator-Clerk at Dunkirk, with its incidental duties of a clerical nature, had been under the Telegraphers' Agreement for many years. These duties were not dispensed with; they were merely transferred to an employe not covered by the Agreement. That result could only be accomplished by negotiation."

What the majority fails to point out, and it is set forth by the Carrier and undisputed in the record, is that the job in question was established primarily because of the existence of a Western Union Office at Dunkirk. This office was by contract operated by the carrier for Western Union, the incumbent of the position performed the telegraphic duties, and the tour of duty was filled out with routine clerical work. The Western Union Company later closed its office. With the close of the office the duties of the Operator-Clerk was reduced, and were almost entirely clerical in nature. Since the work involved did not justify the number of positions existing at Dunkirk, the telegraphers' duties, amounting to approximately 30 minutes per month, were transferred to the nearest block operator, and the clerical work was performed by clerical employes at Dunkirk. The Carrier pointed out that such a transfer of work was entirely proper and so recognized by a decision made on the property. It is well settled that decisions of a system board are binding upon this Board. Award 4447. The complete disregard by the majority of the previous settlements and decisions on the property in analagous cases is a clear violation of the settled policy and holding of this Board.

Furthermore, insofar as the majority finds a violation of the Telegraphers' Agreement in the Carrier's act of transferring "incidental duties of a clerical nature" to "an employe not covered by the Agreement" (a clerical employe), even assuming such clerical duties had been performed by employes covered by the Telegraphers' Agreement for "many years", the majority is patently in error. It is self evident that clerical duties do not accrue *exclusively* to telegraphers under the Scope of the Telegraphers Agreement. That being so, no violation of the Agreement has been shown merely because the clerical duties may have been previously performed by a telegrapher, because, as is succinctly pointed out in Award 5318, "the

controlling point is not whether such duties were previously performed by a Telegrapher but rather does a Telegrapher have the exclusive right to perform them."

Finally, as to the statement by the majority that:

"This is not a case where the work incident to a position had decreased to a point justifying its abolishment."

As pointed out above, the majority overlooks or ignores the closing of the Western Union Office, the existence of which had given rise to the Operator-Clerk job. The majority also ignores the transfer of the few remaining telegrapher duties to the nearest block operator. But even so, what rule in the applicable agreement imposes on the Carrier the restriction, implicit in the above quotation, that work incident to a position must decrease to a point "justifying" its abolishment? The majority do not, and cannot, point to any such rule in the applicable agreement—for there is none. In the absence of such a rule the statement of the majority is nothing more than an improper assumption without basis in the Agreement.

For the reasons stated we dissent.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp