Award No. 6363
Docket No. TE-6049

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway that:

(1) The Carrier violated and continues to violate the terms of the agreement between the parties, when on March 1, 1951, it declared the position of first telegrapher, Boulder, Colorado, abolished, without abolishing the work and transferred such work to others not covered by this agreement.

(2) The duties of said first telegrapher position shall be restored to the scope of the agreement, the former incumbent and any other employes under the agreement improperly displaced from the regular positions as a result of this violation, shall be returned to their respective former positions and compensated for any loss of wages and expenses incurred.

(3) Any other employes who have been adversely affected or deprived of work because of such violation, shall be paid for loss of wages and expenses incurred since March 1, 1951.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the parties hereto dated October 1, 1948, covering hours, wages and working conditions of employes of Carrier, represented by The Order of Railroad Telegraphers.

This dispute involves the attempted abolishment of the first telegrapher position at Boulder, Colorado, effective March 1, 1951. It is the contention of employes that work in the station at Boulder remained the same, subsequent to March 1, 1951, and that Carrier wrongfully and in violation of the agreement, transferred the performances of such work to others not covered by same. In so doing, deprived employes under our agreement, of employment rightfully theirs, not only by more than 40 years of custom and tradition, but actually negotiated into agreements, from time to time, and more especially the current agreement.

Prior to March 1, 1951, there were two regularly assigned telegraphers at Boulder, the first shift telegrapher being assigned from 6:10 A. M. to 2:10 P. M.; the second shift telegrapher from 4:00 P. M. to 12 midnight.

duties. The telegraphic duties performed by the First Trick Telegrapher between 6:10 A.M. and 2:10 P.M. had ceased with the discontinuance of Trains 31 and 32 and re-arranged for the handling of telegraphic work during the night hours, therefore, the ticket selling during that period was confined to Clerks whose duties it was to perform such work.

The Telegrapher whose position was abolished account of the decline in business resulting from the discontinuance of passenger trains Nos. 31 and 32 exercised his seniority rights in displacing a junior employe. There was no loss of time by such employe, therefore, there was not loss of wages.

It was not a violation of the Agreement in discontinuing the position of First Trick Telegrapher at Boulder for reasons above-stated, therefore, the claim should be declined.

OPINION OF BOARD: Allegation is made that Carrier, by abolishing position of first trick telegrapher, Boulder, Colorado, has violated the Agreement between the parties for the reason the work performed by the telegrapher still remains and is improperly assigned to other employes not covered by the Agreement.

The Organization requests the position of first trick telegrapher be restored, the former incumbent and any other employes improperly displaced be returned to their former positions and be compensated for any loss of wages and expenses incurred.

Claim is also made in addition to paragraph 2 of the claim, for any other employes adversely affected by such alleged violation.

Carrier denies it has in any way violated the provisions of the Agreement by its abolishment of the position on March 1, 1951, and further contends that this Board has no jurisdiction to make an award sustaining the contentions of the Organization, on the ground and for the reason that this Board has refused to notifey third parties whose rights may be adversely affected by such a sustaining award.

The Organization contends Carrier has violated the provisions of the Scope Rule, Rules 2 (f) — Classification, 17 — Seniority, 26 (a) Working Conditions and 37 — Rate of Pay. The record discloses that effective March 1, 1951, Carrier abolished the position of first trick telegrapher at Boulder, and changed the hours of the remaining telegrapher to 9:00 P.M. through 6:00 A.M., with allowance for a one-hour lunch period. At the same time Carrier discontinued the operation of Trains 31 and 32. As a result of the discontinuance of the two trains enumerated, there remained no train orders to be copied or sent from Boulder, all messages requiring transmission being handled by the remaining telegrapher during his regular assignment. It is, therefore, clear that following the abolishment of the position by Carrier, no train orders are required to be handled other than above stated. Therefore, such telegrapher work does not remain at Boulder, nor has it been assigned to other employes outside the craft.

The only question remaining to be determined is, has Carrier assigned other duties formerly performed by the telegrapher to others not coming within the provisions of the Telegraphers' Agreement? It is contended that work performed prior to the abolishment by the first trick telegrapher of a clerical nature and other station work, was work rightfully belonging to the Organization, as a matter of custom for over a period of forty (40) years, and also as provided by Rule 26 (a) of the Agreement:

"Rule 26

WORKING CONDITIONS (a) Employes covered by this agreement will, when necessary, assist in handling station work."

It is clear that the work remaining consists of clerical and station work, as more fully set out in bulletin by Carrier, effective April, 1950, showing the

duties of first trick telegrapher. The record shows ticket clerks held positions at Boulder and were members of the Clerks' Organization. Their duties, as designated by the position as "Ticket Clerks", were primarily employed to sell tickets and perform other duties incidental to their work. They also were required to handle telephone communications concerning passenger reservations. Certainly it cannot be said this is work belonging to the Telegraphers. We are of the opinion Carrier, under Rule 26 (a), had the right to use telegraphers, when necessary, to perform other duties, as provided by the rule, but the rule certainly can in no way be construed as giving telegraphers the exclusive right to the work. The work contended by the Organization as still continued since the abolishment of the Telegrapher position, has always been performed by other employes, and such work was only performed by telegraphers to fill in their tour of duty, or as stated in Rule 26 (a), were used only by Carrier when necessary, and which use was permissible under the rule cited. This Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties, sometimes performed by telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to the Telegraphers, nor does the Scope Rule contain any such provision, nor does such right exist through custom and practice, where the major duties of the position have been abolished and those remaining are of a clerical nature. See Awards 5719, 5318, as concurring with this reasoning.

The Board concludes that Carrier was justified in its action in abolishing the position, and in so doing has in no way violated the provisions of the current Agreement.

As to Carrier's position concerning the jurisdictional question, we hold, in view of the foregoing opinion, there is no necessity for a ruling on this question by the Board.

The claim should be denied in its entirety. See Awards 4939, 5779, 5318.

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 hearing thereon;

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of October, 1953.