

**Award No. 8060**  
**Docket No. TE-6881**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Whitley P. McCoy, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**HOUSTON BELT & TERMINAL RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Houston Belt & Terminal Railway, that:

1. Carrier violated terms of the Agreement between the parties, when on the 26th day of December, 1950, without mutual agreement, it declared abolished all tricks on No. 2 positions, (first, second and third shifts) at "BJ" Office, Settegast Yard (near Houston, Texas).
2. Carrier shall restore first, second and third shifts on said seven-day positions; and further, reinstate each employe removed therefrom to his regular assignment.
3. Carrier shall compensate each and every employe removed or displaced from their regular assignment, for all time lost, and/or expenses incurred as a result of the violative action of Carrier.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect an Agreement between the Houston Belt & Terminal Railway Company, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement became effective September 1, 1946, and provides rules governing wages, hours of service and conditions of employment for employes of Carrier covered therein and represented by Telegraphers.

This Carrier operates terminal facilities in Houston, Texas. Settegast Yard is a new facility located on the outskirts of Houston. It was placed in operation in June, 1950. This yard, to some extent, was a consolidation or merger of this Carrier and other carriers entering the terminal at Houston. Consolidation was affected as provided by law and Agreements reached concerning the protection of employes involved.

The Agreement with Telegraphers provided, among other things, the transfer of three positions from Gulf Coast Junction (which was to be abandoned) to Settegast Yard telegraph office known as "BJ" office. In other words, by Agreement, the telegraphers theretofore employed at Gulf Coast Junction were moved to Settegast Yard. Contemporaneous with establishment and operation of the new yard it was found that three additional positions of Operator-Towermen would be required to properly staff this office. These new positions were designated as No. 2 positions. The additional posi-

It is respectfully submitted that should your Board find that a jurisdictional dispute between the Telegraphers and the Clerks is here involved by reason of any injection of teletype machines into this controversy, then it is respectfully suggested that the Clerical Employees be given due notice of the proceeding and an opportunity to be heard in accordance with Section 3 (j) of the Railway Labor Act, reading:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employees and the Carrier or Carriers involved in any dispute submitted to them."

In this connection see Third Division Awards 5432, 5433, 6072, 5599, 5600, 5604, 5759.

In the light of all the foregoing facts and circumstances it is the position of Carrier that the contentions and claim here submitted to your Board are without basis in fact, nor are they supported by any contractual provision in the governing agreement, and should therefore, be denied.

The substance of matters contained in the submission has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts in this case are many, and extremely complicated and difficult to understand. But the relevant and essential facts may be concisely stated as follows: The Carrier provides terminal facilities for certain railroads. Until shortly prior to the arising of this dispute only one train yard was in use for handling this business, known as the New South Yard. Effective June 1, 1950, the Carrier put into operation a new yard known as Settegast Yard. At the same time, by agreement with the Brotherhood, the three telegrapher positions (one on each shift) at the Carrier's station known as Gulf Coast Junction, were transferred to the new Settegast Yard, together with the incumbents of those positions.

At the time of the transfer from New South Yard to the Settegast Yard, and the transfer of the telegraphers from Gulf Coast Junction, and because of some new equipment and changes in methods of operating, there was naturally some confusion as well as uncertainty as to the manning requirements. Accordingly the Carrier assigned one additional operator on each shift, on a temporary basis. Two months later, on August 25, 1950, these added positions (known as No. 2 Position on each shift) were advertised as permanent and were filled in accordance with the provisions of the Agreement.

After the "shakedown" period, when the Yard had settled into normal operation, the Carrier determined that the work could be adequately handled by one operator on each shift, and accordingly abolished the new No. 2 Positions on December 27, 1950. It is significant that the general chairman did not at the time object to this, or question its propriety, but on the other hand merely raised the question of renegotiating the rate for the remaining positions. His letter to the Carrier, dated January 16, 1951, reads:

"On August 18, 1950, we agreed to a settlement of adjustments in rates of pay at Tower 80, Settegast Yard and Tower 87 account changed conditions due to the opening of the new yard at Settegast. At the time, we agreed to \$1.68 per hour at Settegast Yard, you stating that each trick had two men and therefore the responsibilities and work was cut down at this yard.

"I now understand that you have reduced this force to one man on each trick, therefore, I would like to again discuss a rate of pay at Settegast Yard."

It is seen from the above letter that there is here no complaint that the abolition of the positions was improper. No doubt the General Chairman was familiar with the many decisions of this Board upholding the right of a Carrier to curtail forces when justified by work requirements.

Just when complaint was first made that the abolition of the positions was improper is not clear from the Record. The correspondence indicates that the General Chairman was complaining of work having allegedly been turned over to clerks in November, which he states led to the abolition of the jobs, but he did not complain of the abolition as such. The first reference in writing to abolition of jobs as a complaint in itself appears in a letter dated June 9, 1951, nearly six months after the occurrence, from the General Chairman to the General Manager of the Carrier. This letter states that the claim in question had been discussed in a conference between the two on May 21, and had been declined by the Carrier.

From that date, June 9, 1951, until September 28, 1953, a lapse of two and a fourth years, nothing further was heard of the matter by the Carrier. On the latter date the Carrier received notice of intent to file an appeal to this Board. The Carrier takes the position that the claim is not properly before us, first, because it was not handled in the usual manner on the Property, as required by Section 3, First (i) of the Railway Labor Act, and second, because the appeal to this Board was unreasonably delayed. These contentions have considerable merit, but in view of the confused state of the Record, from which we cannot be sure just what happened procedurally, we think it best to dispose of the case on the merits.

The Brotherhood relies on Award No. 6937 of this Division, involving a case between these same parties. In that case, as in this, the rule involved is Rule 1(b), which reads:

"Positions or work referred to in this agreement belong to the employes covered thereby and no work or position shall be removed from this agreement except by mutual agreement."

The Organization argues that the abolition of the No. 2 Positions without mutual agreement was in flat violation of this rule, and that this Board so held in Award No. 6937, decided since this dispute arose.

The facts in Award No. 6937 were quite different from the facts here. There two positions at two different locations were involved, "Operator—South Yards, HA", and "Telephone-Towerman at Tower 117." The Carrier abolished the latter position and transferred the work to the former position, thus combining two separately classified and wage-rated positions which had been at different locations. In the case before us the positions were not separately classified and wage-rated, and they were at the same location. The Board made it very clear in its Opinion that it did not intend to overturn the well-established principle that the working force may be curtailed when the amount of work justifies it, saying:

"It is well to say here, also, that a position remaining in the Agreement does not, by that fact alone, impose a duty upon the Carrier to assign a worker to the position if there are no duties remaining to be performed in the normal course of events for which the position was created."

In other words, the Board sustained the right of the Carrier to vacate a position for lack of work. It continued to make perfectly clear the limited principle it was deciding:

"What we are alone concerned with in this dispute is whether work organized, classified and paid for as the work of a mutually recognized position which has been negotiated into the Agreement can be transferred to an unrelated position at another station and

the first position be abolished . . . when the effect thereof is to remove the position from the operation of the Agreement for all practical intents and purposes."

There was no transfer of work "to an unrelated position", or "at another station," and the effect was not to remove the work from the operation of the Agreement. The work remained just where it was. The work of the No. 2 Positions was not separate, distinct, and different from that of the No. 1 Positions. Work that had required six men in the confusion and settling down process of opening the new yard was found to require only three men when operations became normal. Award No. 6937 is not a precedent for holding that a Carrier cannot curtail forces.

The Brotherhood seeks to strengthen its case, and bring it within the operation of Award No. 6937, by alleging that certain work had been removed from the operators in November, 1950. But the claim that is before us does not, as did the claim in Award 6937, allege a transfer of work. The only violation of the Agreement alleged here is that the Carrier "on the 26th day of December, 1950, . . . abolished all tricks on No. 2 positions". The Brotherhood cannot, by briefs and arguments before us, enlarge upon the claim it presented. But even if it could, the evidence in the Record is insufficient to justify a finding that any work belonging to the telegraphers was taken from them.

While the Carrier, in terms, abolished the No. 2 positions, all it did in substance and effect was to curtail the force. The positions remain, in spite of the Carrier's bulletin stating that they were abolished. They are simply not filled. We do not intend this decision as either approving or disapproving Award No. 6937, to which the Carrier members dissented. We simply hold that nothing herein decided is contrary to Award No. 6937.

**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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.