Award No. 8211
Docket No. TE-7452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Buffalo and East):

1. Carrier violated the agreement between the parties hereto when at 7:00 A. M., March 24, 1954, it declared abolished the first shift, second shift, and third shift, seven day positions of telephoner-leverman at SS-51, Buffalo, New York, when in fact the work of such positions remained and was required to be performed daily thereafter on each shift.

2. Carrier violated the agreement between the parties hereto, when commencing on the 24th day of March, 1954, at 7:00 A. M. and continuing thereafter, it required the occupants of the first shift, second shift and third shift positions of telephoner-leverman at SS-52, Buffalo, New York, to assume, undertake and perform the duties of telephoner-leverman at SS-51, Buffalo, New York, in addition to their regular duties, by making trips, on foot, from SS-52 to SS-51, a distance of (¼) one fourth mile, on each and every shift.

3. Carrier violated the agreement between the parties hereto when commencing on the 24th day of March, 1954, at 7:00 A. M. and continuing thereafter, it merged, combined and consolidated the work, services and duties of positions of first shift, second shift and third shift telephoner-leverman at SS-51, Buffalo, New York, with the work, services and duties of the positions of first shift, second shift and third shift telephoner-leverman at SS-52, Buffalo, New York.

4. Carrier shall be required to restore the positions of first shift, second shift and third shift telephoner-leverman at SS-51, Buffalo, New York, to the same status as that prevailing prior to 7:00 A. M., March 24, 1954.

5. Carrier shall compensate F. J. Hill, L. E. Kepler, L. L. Bruce, C. E. Moore and R. C. Newman, employes holding regular assignments at SS-51 (Buffalo, New York) for all wages lost and expenses

incurred, as a result of the violations hereinbefore set out, as provided in the agreement.

6. All other employes displaced, as a result of violations hereinbefore set out, shall be compensated for all wages lost and expenses incurred, as provided in the agreement.

7. Senior idle employe, extra in preference, shall be paid one day's pay, at the rate applicable to SS-51, Buffalo, New York, for each shift (first shift, second shift and third shift) on each and every day, beginning March 24, 1954, at 7:00 A. M., and continuing thereafter until such violation is corrected.

8. Joint check of Carrier's records be ordered to ascertain the names and amounts due employes as set forth herein.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement governing rates of pay, rules and working conditions, between the New York Central Railroad Company (Buffalo and East), hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, of employes covered thereby. The Agreement was effective July 1, 1948, as amended. The agreement, with amendments, is on file with this Board and is, by reference, made a part of this Submission as though copied herein word for word.

The dispute, submitted herein, was handled on the property, in the usual manner, to the highest officer designated by Carrier to handle such disputes and the claims were denied. The handling on the property was in conformity with the requirements of the Railway Labor Act, as amended. Carrier having failed and refused to adjust the dispute, in accordance with the Agreement, the same is submitted, as provided by law and the rules of this Board, for Award thereon.

On March 18, 1954, R. C. Benson, Chief Signalman (Carrier) Buffalo, New York, issued the following order:

> "Effective 7:00 A. M., Wednesday, March 24, 1954, the position of telephone leverman at SS-51 will be abolished. Such moves as require operation of the interlocking at SS-51 will be handled by signalman at SS-52. Employes affected may make displacement in accordance with Article 28 of the O.R.T. Agreement."

This order was directed to Signalmen—SS-51 and SS-52. The initials "SS" signify "signal station" and the numbers indicate the location of the interlocking tower. Both towers are located in Buffalo, New York. SS-51 is (¼) one-fourth mile distant from SS-52. SS-51 has been in operation 24 hours per day for approximately fifty years.

Commencing at 7:00 A. M., March 24, 1954, and continuing thereafter, Carrier has required the occupants of the positions of first shift, second shift and third shift, providing round-the-clock service, at SS-52, to make trips, from SS-52 to SS-51, each time duties, work and services are required to be performed at SS-51.

As we shall show, the work required to be performed at SS-51 was not abolished effective 7:00 A. M. March 24, 1954. It remained and was required to be performed on each shift daily after the alleged abolishment. The Erie Railroad tracks cross the New York Central tracks at SS-51. Each and every time an Erie train crosses in either direction, the interlocking levers and signals, located at SS-51, must be manipulated and operated. Communications by telephone are, at the same time, required to be performed to permit these train movements.

agent-telegrapher at Alda, Nebraska without abolishing work of the position, the Board, with assistance of Referee P. N. Guthrie, said:

> "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.
>
> "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 employes' time is not occupied with the duties of the position. Awards 439, 4759, 4385, 5127, 5283, 5318."

There are many other Third Division Awards in which the Board has ruled that there is no violation of agreement rules when positions are abolished and all remaining agreement work from the abolished position is subsequently performed by another employe or employes who are entitled to perform it. In this current dispute, likewise, there is no violation of agreement rules when telephoner-leverman positions at SS-51 were abolished and remaining telephoner-leverman work at SS-51 is performed by telephoner-leverman from SS-52 who comes under the Telegraphers' Agreement in the same seniority district.

CONCLUSION

Carrier has shown conclusively that:

1. Carrier is entitled to abolish telephoner-leverman positions at signal station 51.

2. There was no violation of any rules in the current Telegraphers' Agreement.

3. Awards of the Third Division support carrier's position.

No facts or arguments have been herein presented that have not been made known to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains an interlocking plant designated as SS-51, at a point on its Niagara Branch at Buffalo, New York, where Erie Railroad Yard movements cross the Niagara Branch. Prior to March 24, 1954, the Carrier maintained round-the-clock telephoner-leverman at SS-51 to handle the interlocking levers. Effective that date it abolished those positions, and commenced requiring the telephoner-leverman at SS-52, a quarter of a mile distant, to walk to SS-51 whenever it was necessary to handle the levers to permit Erie Yard Movements. The man on duty at SS-52 was required to cease his duties at that station, lock the door, walk to SS-51, unlock the door, set the signals for the Erie movement to proceed, then reset the signals, lock the door at SS-51, and return to SS-52.

The Carrier defends this action on the ground that the work at SS-51 had decreased to such an extent that a substantial part of the employes' time was not occupied. It shows that whereas in April, 1951, there were 308 Erie Yard movements across these tracks, the number had decreased to 172, or by about 45 per cent, by April, 1954. The Record shows that in the first eight days following the change, only 42 trips were made from SS-52 to SS-51, or an average of 1¾ trips per shift. Each trip takes perhaps 30 minutes, so the average time per shift involved on those days was 52½ minutes.

But averages may be deceptive. The Record shows that on March 25, F. Burkum made six trips, involving a total of about three hours; on March 28, I. C. Miller made five trips; on March 31, J. P. Lates made five trips; on other dates employes made two, three, or four trips. All of these represent substantial amounts of time spent away from their jobs at SS-52 and covering the work at SS-51, and they are not rendered the less substantial by reason of the fact that the average is brought down by other shifts.

The Carrier relies upon our decisions holding that where the work of a position is abolished or declines to a substantial extent, the position may be abolished and the remaining work assigned to others. A familiar example of this is where a station has required three clerks, but the work declines to where only two are required, and then further declines to where only one is required. If it still continues to decline, the Carrier may be justified in abolishing the one remaining clerk job, the duties reverting to the Agent under the "ebb and flow" doctrine. Or, for another example, an interlocking plant may be abolished because the signals and switches are to be operated from another station by remote control. Or a passenger station may be closed, and the work transferred to another station.

But the facts of this case do not bring it within the principles illustrated by these examples. SS-51 was not abandoned. Work remained to be done there, and men were assigned to do the work at SS-51. In removing the men who had those negotiated positions at SS-51, and requiring men who held positions at SS-52 to go to SS-51 and perform the work required to be done at SS-51, we think the Carrier violated the Agreement. No doubt the work at SS-51 had gradually decreased, and some solution consistent with efficient operation was required. But in a situation like that, a mutual agreement is called for, not unilateral action.

With respect to the remedy, we must award compensation as requested in Paragraphs 5, 6, and 7 of the Claim, the same to be determined by a joint check of Carrier's records as requested in Paragraph 8. We will not require the Carrier to restore the positions, as demanded in Paragraph 4 of the Claim but will leave it to the Parties to negotiate an agreeable solution for the future.

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 oral 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 violated the Agreement.

AWARD

Paragraphs 1, 2, 3, 5, 6, 7, and 8 of the Claim are sustained, and the employes are to be compensated in accordance with the claim and as may be determined by a joint check of the records to be proper.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1958.

DISSENT TO AWARD NO. 8211, DOCKET NO. TE-7452

Award 8211 cites no rule of the agreement between the parties or other authority in support of the majority's holding herein that "a mutual agreement is called for" under the facts of this case as contrasted with the examples cited of other cases where positions are abolished and the remaining work is assigned to others. The alleged distinction between the instant case and the other cases cited is a distinction without a difference. In the instant case as in the others, the work involved is all within the same seniority district. Furthermore, no rule or authority has been nor could be cited which places a fence around the work of positions, or which requires mutual agreement between the parties before positions are abolished.

For the above reasons Award 8211 is in error and we dissent. An Award of this character increases the difficulties confronting railroads in their struggle for survival.

/s/ W. H. Castle
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ J. E. Kemp
/s/ C. P. Dugan