

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: This is a resubmission of the dispute covered by Docket TE-6660, on which Award 6716 was rendered by your Division on the 16th day of July, 1954, with Referee Curtis G. Shake participating.

In that Award it was stated:

"Claim remanded to the property for negotiation, without prejudice."

The dispute involves the claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey that:

- (1) The Carrier violated and continues to violate the provisions of the Agreement between the parties, when, on October 1, 1951, it did, by unilateral action declare the position of Freight Agent at the Freight Station Spring Lake, New Jersey, abolished; while the work of the position was not in fact abolished but remained to be performed.
- (2) Commencing October 1, 1951, the Carrier violated and continues to violate the provisions of said agreement when by unilateral action, it required the Ticket Agent-Operator and the Assistant Ticket Agent Operator at the Passenger Station at Spring Lake to perform the duties of the Freight Agent.
- (3) The former occupant of the position of Freight Agent at Spring Lake who was improperly removed from his assignment, as well as all other employees resultantly displaced from their assignments, shall be restored thereto and be compensated for all wage loss as well as payments provided in Article 22 for each day beginning with the date the Freight Agent's position was improperly declared abolished, or the date that an employee was displaced, and continuing on a day to day basis thereafter until the employees are restored to their respective assignments; and
- (4) All other employees who were deprived of work as a result of this violative act shall be paid for all wage loss as well as payments provided in Article 22.

to settle this case by an adjustment in rate". Therefore, as said to you previously and as indicated in my letter of December 12, 1954, it is our purpose to resubmit the dispute to the Board for a decision. We expect to submit to the Board similar disputes which involve the arbitrary consolidations at Keyport and other locations and which have been discussed in conference and mentioned in previous correspondence.

Yours very truly

/s/ J. L. Elliott

cc: Herman Gerke
General Chairman, Division 45
J. W. Turner
G. S. & T., Division 45

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It will be noted from the above the Employees refuse to negotiate and settle this problem. They have failed to produce or submit any other evidence to support their position and the Carrier affirmatively states the exchange of correspondence submitted here is all that passed between Carrier and Employees and asks that no other evidence be accepted from the Employees.

The Carrier repeats that the language in the decision of Award 6716 is clear and does not lend itself to any further clarification or new Award and that the Employee's request be denied.

OPINION OF BOARD: This docket is the resubmission of a claim which was before the Division in Docket TE-6660 on which Award 6716 was made on July 16, 1954. In that Award the Division stated in pertinent part the following:

"We deduce from the record that some part of the Freight Agent's work, the amount of which we cannot accurately determine, remained after the Carrier's action of October 1, 1951. The Organization's General Chairman concedes the Carrier's right to consolidate or abolish positions under proper circumstances; and the Carrier apparently recognizes that there may be an obligation on it to make equitable wage adjustments when such things occur.

"It does not appear to us, however, that the parties have exhausted the efforts which they are required to make to reconcile their differences on the property. Both parties apparently understand their contractual obligations and we think they must share the responsibility for their failure to make a good faith effort to settle the dispute."

This above quoted part of the Opinion of the Board was followed by Findings in pertinent part as follows:

"That this Division of the Adjustment Board does not presently have jurisdiction over the dispute involved herein, for the reason that the parties have not made a good faith effort to settle the same on the property, as required by the Railway Labor Act, as amended."

The Award thereupon made by the Board stated:

"Claim remanded to the property for negotiation, without prejudice."

The new submission shows that after Award 6716 was made the parties made at least some efforts to negotiate further on the matter. However, it appears from the record that they could not agree upon just what they

were to negotiate about. The Carrier contended that it was the intent of the Award that negotiations be had on the matter of a possible adjustment in rate for the position which took over the remaining work of the Freight Agent's position which was abolished. Apparently the Organization took a different view and insisted that the negotiations go to the issue of whether or not under the schedule the Carrier had the right to take the action which it did. In any event, despite these efforts at negotiation the dispute remained unresolved. Therefore, the Petitioner Organization has resubmitted the claim to this Division.

The Carrier has contended that Award 6716 decided the dispute and that the Division should refuse to review the matter further. Since the prior award did not clearly state a disposition of the claim, and since the Award remanded the dispute to the parties "without prejudice," we shall accept the resubmission and dispose of the case on the merits.

In disposing of the case on the merits we shall consider the claim as stated and not deal with any alleged issue of rates which has been brought into the prior consideration although no dispute on rates has been joined in the claim before the Division. With respect to any possible issue on rates the parties know their rights and obligations under the Agreement, and are free to pursue them as they wish.

The issue posed in the submission goes to the question of whether the Carrier violated the Agreement effective October 1, 1951 when it abolished the position of Freight Agent at Spring Lake, and gave such remaining work of the position so abolished to the Ticket Agent-Operator and the Assistant Ticket Agent-Operator to perform.

We have been cited no provision of the effective Agreement which forbids the Carrier taking the action which it did. The record shows that there was a substantial decrease in the work at this station. While it is not clear as to the exact amount of the decrease, the evidence indicates a decrease of about 50% over the period prior to the action about which complaint is made in this claim. This Division has held in numerous Awards, that in the absence of specific Agreement prohibitions, a Carrier may abolish a position and rearrange the remaining work when there is such a decline in business that a substantial part of the time of an occupant of a position is not utilized in performing the work of the position. It is understood that such a rearrangement of remaining work will involve its assignment to positions of the class and craft under the scope of the Agreement. That was the situation in the instant case. The remaining work was given to positions in the same class and craft, in the same seniority district and under the same Agreement.

Awards cited by the Organization in support of its position, we find distinguishable. Hence we do not regard them as controlling in the instant dispute.

Evidence of record including provisions of the effective Agreement and prior Awards by the Third Division, lead to an inescapable conclusion that the claim should be denied. The Award will so provide Awards 5719, 6187, 6944, 7073, 7359.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1958.