

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, 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), that:

1. Carrier violated and continues to violate the Agreement between the parties hereto when, effective with close of business October 15, 1954, it, acting unilaterally, declared abolished the position of Agent, Cohoes, New York; that such position was not, in fact, abolished but the work thereof remained to be and has been, continuously, performed, at all times subsequent thereto, by employees not covered by Telegraphers' Agreement.
2. Carrier shall be required to restore J. H. Wall to his position of Agent, Cohoes, New York and to compensate him for any wage loss, travel and waiting time, plus additional expenses, necessarily incurred, as a result of wrongfully removing him from regular assigned position, beginning October 16, 1954 and continuing until the violation is discontinued.
3. Carrier shall also make whole any and all employees adversely affected as a result of the removal of the agent's position at Cohoes, New York, for any wage loss, travel and waiting time expense, and other expenses incurred, from October 16, 1954 to the date the violation is discontinued.

OPINION OF BOARD: This claim grows out of the action of the Respondent Carrier on or about October 15, 1954 in abolishing the position of Agent at Cohoes, New York. This position at the time it was abolished was covered by the Telegraphers' Agreement, and had so been since about 1948. Since October 15, 1954 there has been only one position at Cohoes, that of Assistant Cashier-Clerk which position is covered by the Clerks' Agreement.

Petitioner Organization contends that the Carrier violated the applicable Agreement when it abolished the Agent's position and transferred the work of the position to employees not covered by the Telegraphers' Agreement.

In view of the circumstances under which the Agent's position was abolished and, in view of the manner in which the duties of the position were redistributed, the question arises as to whether the Clerks' Organization was

entitled to notice of the pendency of this claim in accordance with the requirements of Section 3, First (j) of the Railway Labor Act, as amended.

The record shows that on March 6, 1956 the Carrier Members of the Division made a motion to give such notice to the Clerks' Organization. The motion failed for lack of a majority vote. The matter of such notice was argued before the Referee and it was asserted by the Carrier Member that the Division could not make a valid sustaining award without first giving notice to the Clerks' Organization as an involved party in accordance with Section 3, First (j) of the Railway Labor Act, as amended.

Therefore, it is necessary for us to consider this matter of notice before going to the merits of the claim. The Carrier's action in abolishing the Agent's position and retaining one position at Cohoes is based upon the proposition that only enough work remained at Cohoes to justify one position. If such is the case, the sustaining of this claim could possibly mean that the work now performed by a Clerks' position would be transferred to the Agent position, which would be under the Telegraphers' Agreement. If such an eventuality should ensue, the Clerks would be vitally interested and concerned. Under such circumstances the issue of giving notice to the Clerks' Organization is relevant. The Referee now sitting has discussed the matter of third party notice to some extent in Award 8022. It is unnecessary to repeat that opinion here. The conclusion reached there was dictated by the requirements of Section 3, First (j) of the Railway Labor Act, as construed by the various courts which have considered the matter. Section 3, First (j) placed the obligation of giving notice to other parties upon the Board. Therefore, the defect precluding the consideration of the merits at this time is one which the Board has the power and obligation to remedy. Since it is the Board's responsibility to remedy the defect, it is appropriate for the Board to retain jurisdiction, but to defer action on the merits until such time as it has given notice to the Clerks' Organization in accordance with the requirements of Section 3, First (j) of the Railway Labor Act as interpreted by the courts.

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 has jurisdiction over the dispute involved herein, subject to the following finding as to notice:

That the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is involved in this dispute, and therefore, entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act.

That any decision on the merits must be deferred until notice is given to the Clerks' Organization.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the Clerks' Organization as an involved party.

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.