

Award No. 8537
Docket No. TE-7314

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad; Missouri-Kansas-Texas Railroad of Texas, that:

1. The Carrier violated the terms of the current Telegraphers' Agreement when on June 16, 1951 it declared abolished the position of Ticket Agent at Waco, Texas, without in fact discontinuing the work of such position and concurrently transferred and assigned the performance of such work to employes not covered by the agreement; and
2. The work formerly performed by the Ticket Agent at Waco shall now be restored to the employes covered by the Telegraphers' Agreement and performed by employes coming within the scope thereof; and
3. All employes adversely affected by the Carrier's arbitrary act in removing from the agreement the work previously performed by the Ticket Agent at Waco, shall be compensated for all monetary losses sustained.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, is in effect between the parties to this dispute.

The following rules of this agreement are invoked in support of the Employes' contention:

"RULE 1—EMPLOYES INCLUDED

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent Telegrapher, Agent Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen,

OPINION OF BOARD: This claim arises out of a dispute over the abolishment of the position of Ticket Agent at Carrier's Waco, Texas, station and the assignment of certain of the duties of that position to the General Agent and to clerical employees not covered by the terms of the applicable agreement between Carrier and the Order of Railroad Telegraphers. Carrier stated that the position was abolished because of a declining volume of business at Waco. Petitioner entered no denial of this assertion; hence it must be accepted for the purposes of this decision.

The position was a monthly-rated job, with assigned hours of 7:00 A.M., to 4:00 P.M. While the parties do not agree as to the precise duties of the position, it is clear from the record that they were both supervisory and clerical. It is also evident that the Ticket Agent's duties were performed under the overall supervision and direction of the General Agent who was in charge of all operations at Waco. In addition to the Ticket Agent, there were three positions in the office not covered by the agreement between these parties, i.e., an accountant and two ticket sellers. Other than the supervisory duties performed by the ticket agent, all four employees performed similar work—sold tickets, provided information to the public and accounted for money collected from ticket sales.

After the abolishment of the position of Ticket Agent at Waco, the General Agent has exercised all supervision over the ticket office, including the supervisory work formerly performed by the aforesaid ticket agent. The General Agent stated for this record:

"I do no clerical work at the ticket office, nor do I sell any tickets. I go over three or four times daily, and see that the work is properly done, and that the reports are made."

The Scope Rule of the applicable Agreement includes "Agents" and "Ticket Agents" but paragraph (b) thereof contains a list of stations which are to be considered "supervisory and . . . not subject to the rules of the agreement, except Rules 1 (Scope) and 18 (protection of seniority rights in event of promotion to train dispatcher or supervisory agent)." (interpolations supplied.)

When confronted with the Organization's protest on the property over the abolishment of the position, the Carrier relied on two alternative defenses:

(1) That the positions of Agent and Ticket Agent at Waco were official in character, thus not subject to the rules of the Agreement and, therefore, Carrier was free from any contractual liability in abolishing the job and reassigning the duties thereof; or

(2) That even if the positions were covered by the Agreement, nothing therein would prevent Carrier from abolishing the position of Ticket Agent and assigning the duties thereof to another employee (Agent) covered by the same agreement.

Petitioner here asserts that the Ticket Agent position is fully covered by the Agreement, and that it, therefore, may not be abolished and the duties thereof assigned to others so long as the work of the position remains to be performed.

It is necessary, in order to determine the issue here presented, first to make a finding as to the extent, if any, these positions are subject to agree-

ment rules. Award 6202 of the Division is in point and may be cited as controlling as to the General Agent's status. There we said:

"* * * we conclude that occupants of the positions of supervisory agent at the stations named in Rule 1 (b) are employees insofar as Rule 18 is concerned and the Organization represents them to that same extent."

While the Award is silent as to the coverage of the ticket agent position, in the light of the facts of record here and the foregoing decision, it may reasonably and logically be inferred that ticket agents are covered at least to the same extent as supervisory agents, in that both are "employees" for representation and seniority purposes.

Having so decided, we find no difficulty in holding that it was no violation of the Agreement for Carrier here to abolish the position of Ticket Agent (See Awards 4992 and 5318), and assign the supervisory duties thereof to another employee, the Agent, because this was not a transfer of work from one agreement to another.

There remains the question of the assignment of clerical duties to other employees admittedly not covered by the Agreement. These can not be held to be duties which members of the Telegrapher craft have the exclusive right to perform either by custom or under the agreement. (See Awards 5803, 5867 and 7073).

There is no basis here for a sustaining award and the claim will be denied.

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 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 20th day of November, 1958.