

Award No. 11435
Docket No. TE-10392

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. Carrier violated the Telegraphers' Agreement when and because on March 20, 1957, it allowed H. W. Glover to improperly displace E. J. Hudson on the operator-clerk position at Washington, N.C., as of 8:00 A. M., March 21, 1957, at which hour and date the classification of said position was 'agent-operator', having been so reclassified on and after the close of business at Washington, N.C., agency on March 20, 1957.

2. Hudson shall be compensated at the basic rate of \$2.51 per hour applicable to the agent-operator position at Washington, N.C., less the amount earned in other employment, starting March 21, 1957, and continuing until such time as he is restored to the position on which improperly displaced.

3. All other employees resultantly displaced shall be reimbursed all wage loss suffered, including expense incurred by transfer, and restored to their former position should they so desire.

EMPLOYES' STATEMENT OF FACTS: For many years prior to March 21, 1957, there had existed at Washington, North Carolina, a position of "Operator-Clerk", listed in all Telegraphers' Agreements since 1918. The position is set out in the current agreement (published August 1, 1937) as follows:

"Station	Position	Pro-rata Hourly Rate	Overtime Hourly Rate
Washington	O-C	\$0.73	\$1.09½"

Simultaneously there has existed a position of "Supervisory Agent" not covered by the Telegraphers' Agreement which the Carrier filled by appointment. None of the rules of the Agreement applied to the agency position or to the incumbent in his occupancy thereof.

To follow this line of reasoning on the part of the petitioner's general chairman, would be to say that the incumbent of the operator-clerk's position at Washington would, upon abolition of the Supervisory Agent's position, assume the newly created position of Agent-Operator without following the contractual processes of bidding thereon and obtaining same through exercise of seniority rights. As your Division has held, as well as have the Courts, seniority is a valuable property right to the individual employe, and to take the view expressed in the above-quoted portion of the general chairman's letter would, it appears to us, have placed in this newly created position, a man who stands No. 17 on the seniority roster, to the detriment of, and restriction of, the seniority rights of those senior to him on the roster. As stated above, the Supervisory Agent (H. W. Glover) whose position was abolished, stands No. 10 on the seniority roster, with a date ante-dating that of Operator-Clerk Hudson by practically 21 years. YET, although the newly created position of Agent-Operator at Washington may have been more preferable to Glover than any other position he could have bid in or made displacement on, the organization is taking the position Glover should not have that position; that he must take a less desirable position from his point of view. This leads respondent to ask then of what value are the contract seniority rules to Glover, if the position of the organization as stated, should prevail. Article 22, the seniority rule provides:

"Seniority will be confined to the district upon which employed and will be retained by the employe so long as he remains in service."

And to carry this point further, the ultimate of such reasoning on the part of the organization would be that regardless of the qualifications, fitness and ability of an incumbent Operator-Clerk's position at a Supervisory Agency, when and if such Supervisory Agent's position is abolished and a newly created position agent-operator is established, that he (the incumbent operator-clerk) must be given the position regardless, and even this position is inconsistent with the contractual provisions of Article 23 which provide:

"Employees covered by this agreement are considered in line for promotion and where qualifications are sufficient, seniority will prevail."

Managements holds that the claim is without merit, contractual basis, or soundness of position; that to uphold petitioner's contention would be to unduly and violatively restrict the seniority rights of a senior employe in favor of a junior employe; that no consideration is given by petitioners to the qualifications of the man in their specious argument. We urge, therefore, that the claim should be denied, and pray your Division to so hold.

This submission is being made in accordance with the provisions of the motion of the Third Division, dated November 26, 1957 (effective January 1, 1958), and the carrier reserves to itself all of the rights accorded it under the provisions of said motion, and to make further reply, should same be desired, to the petitioners briefs and arguments.

OPINION OF BOARD: The question presented is whether Carrier violated the Agreement when, by its unilateral action, it: (1) simultaneously abolished the positions of "Supervisory Agent" (not covered by the Agreement) and "Operator-Clerk" (covered by the Agreement), at its Washington, North Carolina Station, and created the position of "Agent-Operator" in which it

consolidated the duties of the abolished positions; and, (2) arbitrarily assigned the former incumbent of the "Supervisory Agent" position (H. W. Glover) to the position of "Agent-Operator" to the detriment of the former incumbent of the "Operator-Clerk" position (E. J. Hudson, Claimant herein) and other employees adversely affected.

The following are admitted or uncontroverted facts:

1. Carrier was free to abolish the "Supervisory Agent" position at its will;

2. In the Agreement here being interpreted and applied and preceding agreements between the parties, covering many years prior to May 21, there is listed an "Operator-Clerks" position at Washington, North Carolina. (NOTE: All dates herein are in the year 1957 unless otherwise indicated.) It is the only position at that Station listed in the Agreement:

3. On March 8 Carrier issued Bulletin No. 3894 which reads:

"Bids will be received through March 18, 1957 for position of Agent-Operator at Washington, N. C. Rate of Pay — \$2.51 per hour. Assigned hours — 7:45 A. M. to 4:45 P. M., daily except Saturdays, Sundays and Holidays."

4. Telegraphers, by letter under date of March 11, informed Carrier that to issue Bulletin No. 3894 "under such circumstances is violative of the agreement." Telegraphers stated its position:

"This has reference to your Bulletin 3894, dated March 8, 1957, advertising position of agent-OPERATOR Washington, N. C., concerning which we had a brief discussion yesterday when you stated that the bulletin is designed to combine, or add the duties of OPERATOR (covered by the agreement) to the duties of Agent (not covered by the agreement) and as a result of this combination, declare the present OPERATOR-clerk position at Washington, N. C., abolished.

"As stated to you yesterday, and as previously stated in my letter of September 3, 1956 addressed to Mr. R. F. Haley, Director of Personnel, copy to you under your file ORT-377, to issue such a bulletin under such circumstances is violative of the agreement. For the sake of brevity that letter is invoked here with equal application.

"Therefore, we are protesting Bulletin No. 3894 in advance of any assignment thereunder, as such a bulletin is improper and has no sanction under the Telegraphers' Agreement, and we request its annulment.

"In other words, the OPERATOR position presently assigned at Washington cannot be abolished in fact as long as operator's work remains. When agency work not covered by the Agreement is coupled with the work of the operator, the operator remains on the assignment. The employee now occupying the Washington agency which is not covered by the Agreement has no claim or right to the consolidated position. Consequently, numerous claims because of improper displacements, etc., will result if you permit the completion of the matter as you have started it."

5. On March 15 Carrier unequivocally cancelled Bulletin No. 3894;

6. Carrier, on March 20, sent a telegram addressed to the then incumbents of the "Supervisory Agent" and "Operator-Clerk" positions stating:

"Positions of Supervisory Agent at Washington will be abolished after today and Mr. Glover will exercise seniority on position now held by Mr. Hudson on March 21, 1957.

Joint HWG EJH."

7. Prior to transmittal of the telegram set forth in 6, above, Carrier had received 8 bids in response to Bulletin No. 3894. Among the bidders, but not first in seniority, was the incumbent of the "Supervisory Agent" position. Claimant herein also had put in a bid. These bids were "washed out" when the Bulletin to which they related was cancelled;

8. On March 21, the former Supervisory Agent assumed the position at the Washington Station in which was combined the former duties of the abolished position of "Supervisory Agent" and "Operator Clerk"; and, a little over one hour after the beginning of the workday sent a telegram to Carrier reading:

"I desire to exercise my seniority and in doing so want the position of Agent-Operator at Washington, NC, held by Hudson;"

9. Addenda to the Agreement establishes that it has historically been the practice to make changes in positions at the Stations listed in and covered by the Agreement by negotiations and supplementary agreements.

The pertinent provision of the Agreement which Carrier cites as authority for its action is:

"ARTICLE 25.

"Retention of Seniority by Promoted Employees.

"Employees promoted from positions covered by this agreement to official or subordinate official positions with the Norfolk Southern Railroad Company or the Order of Railroad Telegraphers will retain and continue to accumulate seniority on their home district."

The interpretation of Article 25, agreed to by the parties on December 30, 1942, states:

"It is mutually agreed that employees promoted to official or subordinate official positions with the Norfolk Southern Railway Company may upon returning to the class of service covered by the agreement due to reduction in force or abolition of official or sub-official position exercise their seniority by returning to the position held at the time of promotion, if such position is then held by a junior employee, or may take any position that has been advertised subsequent to promotion and filled by a junior employee at time or return to service . . ."

It is not disputed that the Supervisory Agent had been promoted to that position from the position of "Operator-Clerk" and had the latter position remained in existence the Supervisory Agent, upon the abolishment of his position, could have exercised his seniority to displace the Claimant. The controversy centers on whether the Supervisory Agent could by mere designation of Carrier be assigned to a newly created position of "Agent-Operator" which

was not the position held by the Supervisory Agent at the time of his promotion.

The submission and brief filed by Carrier are confusing and contradictory as to when the position of "Operator-Clerk" was abolished and the position of "Agent Operator" was created. In its arguments Carrier, without support in the record, attempts to mislead by stating that the Supervisory Agent was assigned to the position of "Operator-Clerk" on March 21, and it was sometime thereafter that the position was reclassified to "Agent Operator." This, obviously, has been done seeking to bring Carrier's action within Article 25. In this it fails; for, on two occasions, in letters, in the record, to Telegraphers dated May 21 and August 12, is stated, respectively:

"The Management abolished position of Supervisory Agent at Washington because, in its judgment, such position was no longer necessary. It created a new position of Agent-Operator at that point." (Emphasis ours.)

"The fact is that Management determined that because of changed conditions there was no longer any necessity for maintaining a Supervisory Agent at Washington, and accordingly such position was abolished . . . Coincident therewith, carrier created a new position of Agent-Operator at that point, . . ." (Emphasis ours.)

On the basis of these admissions we find that the positions of "Supervisory Agent" and "Operator-Clerk" were simultaneously abolished on March 20; and, that Carrier arbitrarily assigned the former Supervisory Agent to the newly created position of "Agent-Operator" in derogation of the Agreement. Certainly, no justification for the actions of Carrier can be found in Article 25 of the Agreement.

Carrier has failed in its burden to prove that it had the absolute or contractual right to assign the Supervisory Agent to the newly created position to the detriment of Claimant and those other employees adversely affected by the assignment. We will sustain the claim.

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

That the parties waived oral hearing;

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1963.