

Award No. 11589
Docket No. TE-9868

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, The New York and Long Branch Railroad, that:

1. *The Carrier violated the Agreement between the parties when, acting alone, it abolished the Freight Agents' positions at Matawan and South Amboy, New Jersey, while the work of said positions still remained to be performed; reclassified the Ticket-Agent-Operators' positions at the respective Passenger Stations to that of Freight and Ticket-Agent-Operator without in fact changing the duties of the reclassified positions; and assigned the work of the abolished Freight Agents' positions to a clerical position at the respective Freight Stations, not represented by the Agreement.*

2. *The Carrier shall, because of the violation set forth above, restore the work to the Agreement and the former occupants of the respective Freight Agents' positions thereto, with compensation for any loss of wages suffered due to Carrier's violative act, and such other compensation as provided by Article 22 of the Agreement.*

3. *The Carrier, in addition, shall, because of the violation set forth in Item 1, return other adversely affected employes to their respective positions, and compensate them for any loss of wages, and such other compensation as provided by Article 22 of the Agreement.*

4. *The Carrier shall, in addition to all of the above, pending restoration of the Freight Agents' positions at Matawan and South Amboy, New Jersey, pay to the senior idle telegrapher, extra in preference, a day's pay at the rate of the abolished positions, for each and every day on which employes outside the Agreement perform the work of the Freight Agents at Matawan and South Amboy, New Jersey.*

Check after consolidation reflects the Clerk did additional duties consisting of:

Preparing Bell telephone toll charges report	consuming 27 minutes
Preparing miscellaneous bill..	consuming 4 minutes
Unloading CNJ truck LCL freight.....	consuming 10 minutes
Freight information	consuming 9 minutes
Preparing period reports.....	consuming 21 minutes
Delivery LCL freight (after Clerk's assigned hours)	consuming 10 minutes
	—
	81 minutes

(81 mins. which may be considered work performed by Agt.)

It is observed from the above that the work of the clerk at both of these stations still remains, and that the additional duties being performed, which may be considered work performed by the Agent, certainly are not sufficient to justify a position of Agent at either of these points.

Insofar as the consolidation of the freight and ticket agencies are concerned, the position of the Carrier in the instant claim is the same as that in Award No. 6716, involving a similar claim on this property at Spring Lake, N. J.

In conformity with the findings in Award No. 6716, due to the consolidation of these positions, we increased the rate of pay of the Agent-Operator at South Amboy from \$2.02 to \$2.09 per hour, and the Agent-Operator at Matawan from \$2.05 to \$2.24 per hour, both effective September 10, 1956.

In consideration of the facts contained herein, namely:

(1) Violation of the provisions of Article V (b) of the August 21, 1954 National Agreement in the handling of this dispute on the property by the employees;

(2) The employees have not cited any articles of their controlling agreement having been violated in the consolidation of these positions;

This claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the employees' representatives.

OPINION OF BOARD: Petitioner has withdrawn from this Board that part of the Claim which relates to South Amboy. We pass upon the merits of the Claim only insofar as it relates to occurrences at Matawan.

Effective September 18, 1956, Carrier abolished the position of Freight Agent at Matawan, New Jersey. A Ticket-Agent-Operator position at Car-

rier's passenger station at Matawan was consolidated with the abolished Freight Agent position and the supervision of the Freight Agency was assigned to the Ticket-Agent-Operator.

Petitioner's Claim as filed with the Carrier was that Carrier's unilateral abolishment of the Freight Agent position with the transfer of duties to a Ticket-Agent-Operator was a violation of the Telegraphers' Agreement. In the claim Petitioner did not cite any particular provision of the Agreement as having been violated.

In the course of processing the Claim on the property, and after the initial denial of the Claim, Petitioner argued that a substantial portion of the work of the abolished Freight Agent position was being performed by clerks.

Both parties have cited a multitude of Awards pointing out conflicts and distinguishing besides citing with favor. These have all been studied; and, from the study we conclude that the following extraction from Award No. 11294 is prevailing precedent:

"As stated in Award 6022, there are two principles so well established there is no occasion for citing awards supporting them that must be given consideration in determining the rights of the parties under the confronting facts as we have construed them. The first is that except insofar as it has restricted itself by the Agreement the assignment of work necessary for its operation lies within the Carrier's discretion. The second is that in the absence of any rules of the Agreement precluding it from doing so, it is the prerogative of management, so long as it actually intends to accomplish such a result, to abolish a position if a substantial part of the work thereof has disappeared."

The issue in this case is whether a "substantial part" of the work of the Freight Agent position remained after its abolishment.

It is uncontradicted that the supervisory duties of the Freight Agent were assigned to the Ticket-Agent-Operator.

As to whether a substantial part of the work of the Freight Agent position remained and was performed after its abolishment the only evidence in the record is the result of a joint check made on one day following the abolishment. This shows that clerks performed only fifty-two minutes per day of work formerly performed by the Freight Agent. While this joint check was conducted at the request of Petitioner—and Petitioner does not deny its accuracy—it attempts to disparage it.

Regardless of any probative value being attached to the joint check we find that Petitioner has not proven by a preponderance of evidence, in the record, that a substantial part of the work of the Freight Agent position remained and was performed by clerks after that position had been abolished. We will, therefore, deny the Claim.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1963.