

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, 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 the Carrier violated the Agreement between the parties when:

1. On July 6, 1956, it improperly removed George W. Brantley from his duly assigned position as agent at Middlesex, North Carolina.
2. It improperly, by such action, caused and permitted Brantley to displace C. W. Fish (temporarily assigned) from his position as second trick operator-leverman, Wilson Tower, (regularly owned by B. H. Whitley), and Fish in turn took his place on the extra list.
3. It improperly declared the position of agent at Middlesex to be abolished effective July 6, 1956.
4. It improperly declared the position of agent-operator at Bailey, North Carolina, to be abolished effective July 6, 1956.
5. It improperly bulletined, under date of June 25, 1956, a position of agent-operator at Bailey-Middlesex and improperly assigned Mr. J. S. Hatley to such position effective July 6, 1956.
6. It improperly permitted and requires an employe not covered by the Agreement to act as and assume the role and duties of agent-operator at Bailey during the period 10:00 A.M. to 12:00 Noon, Monday through Friday of each week, effective July 9, 1956.
7. It improperly suspended and continues to suspend Mr. J. S. Hatley from his agent-operator's position at Bailey in requiring him to perform service at Middlesex beginning July 9, 1956.

That because of said violations, the Carrier shall be required to:

- 1(a). Restore Mr. Brantley to the agency position at Middlesex and compensate him for any wage loss and expenses incurred by reason of his removal from that position.

2(a). Restore all other displaced employees named to their positions held prior to Brantley's removal and compensate them for all wage losses and expenses incurred as a result of such displacements.

3(a). Restore the agent's position at Middlesex to a minimum eight hour daily basis as it existed prior to July 6, 1956.

4(a). Restore the agent-operator's position at Bailey to a minimum eight hour daily basis as it existed prior to July 6, 1956.

5(a). Annul or otherwise render void Bulletin No. 3726 and the assignment made thereunder.

6(a). Compensate the senior idle employee under the Telegraphers' Agreement (extra in preference) a day's pay for each day an employee not under the Agreement is permitted or required to assume and/or perform the agent-operator's position at Bailey and/or the work thereof during the forced absences of the agent-operator.

7(a). Compensate J. S. Hatley for two hours at straight time rate for each day suspended from his agent-operator's position at Bailey while being required to perform service as agent-operator at Middlesex; also, for any expenses incurred for each of such service.

8(a). Compensate the second senior idle employee under the Telegraphers' Agreement (extra in preference) a day's pay at the Middlesex agent-operator rate, for each day the agent-operator's position at Middlesex is assigned to and worked by the agent-operator at Bailey.

EMPLOYEES' STATEMENT OF FACTS: Briefly put, the Statement of Claim reflects the violative acts of the Carrier in abolishing two agency positions and creating in lieu thereof one position. For many years prior to July 6, 1956, there existed two distinct positions at Middlesex and Bailey, North Carolina. Turning to the several agreements between the parties down through the years we find the following listings of the positions here involved:

Telegraphers' Agreement, effective October 1, 1919:

Middlesex	Agent-Operator	\$.4950 per hour
Bailey	Agent-Operator	.4800 per hour

Telegraphers' Agreement, effective July 1, 1921:

Middlesex	Agent-Operator	(Rate not shown)
Bailey	Agent-Operator	(Rate not shown)

Telegraphers' Agreement, effective January 16, 1922:

Middlesex	Agent-Operator	\$.52 per hour
Bailey	Agent-Operator	.52 per hour

Telegraphers' Agreement, effective June 1, 1924:

Middlesex	Agent-Operator	\$.55 per hour
Bailey	Agent-Operator	.55 per hour

agency positions. However, respondent carrier respectfully submits that the latest pronouncement on this subject was your Division's Award 6944 which involved facts on all four with the instant dispute, and in which Award the Referee in a well-reasoned opinion, sustained the position of the railroad. Respondent respectfully asks your honorable Division if a carrier is not to be governed by a pronouncement of your Division—in fact the latest such pronouncement—and which has not been subsequently overruled, then of what value are such pronouncements to govern a carrier's actions. In other words, if Award 6944 is not to be accepted at its face-value when applied to an exactly parallel case, then the situation resolves itself into one of chaos and uncertainty.

Respondent assumes also that petitioners may contend that because carrier initiated conferences with employe representatives to discuss the proposed consolidation and/or closing of stations, as in this instance, that such was a recognition on the part of Management that it considered such matters to be subject to negotiation. Management categorically denies that it so considered the subject matter, but points out that the employes apparently misinterpret such action as conceding it to be a negotiable matter. They apparently overlook the fact that all matters which the employes are invited to discuss in conference do not become negotiable matters; that certain matters are discussed with employe representatives because they are of mutual interest, and for maintaining good employer-employe relations. The sole purpose of the Management inviting the employes to discuss this matter in conference was to lay the facts and figures before them, and to solicit their co-operation in not interposing objection to the carrier's petition before the Public Utilities Commission.

Respondent further assumes the petitioners will contend that inasmuch as the positions of Agent-Operator at Bailey and star agent at Middlesex are listed in the wage scale of the agreement, shown therein as Appendix A, in accordance with Rule 32 reading:

"All positions covered by this agreement will be listed in Appendix A, the wage scale, showing location, classification, and rate of pay applicable, which forms a part of this agreement."

the carrier does not have the right to abolish any such position without negotiation. Respondent points out, however, that nowhere in the agreement can the petitioners cite any rule restricting the right of management to abolish positions when there is no longer any work for that position, or where the amount of work has diminished where it can be taken care of by another employe of the same class, and the action of the carrier in so doing is not violative of the employe just so long as any residual work of the abolished position is assigned to and performed by an employe subject to the agreement. (See Award 6944.)

Respondent holds that the claim is entirely without contractual basis or merit, is based on fallacious premises, and should be denied, and we urge that your Division so hold.

OPINION OF BOARD: The instant claim arose when it was alleged by the Order of Railroad Telegraphers that the Norfolk Southern Railway violated the current Agreement between the parties when:

1. On July 6, 1956, George W. Brantley was removed from his assigned position as agent at Middlesex, North Carolina.

2. By the action described above, the Carrier caused and permitted the said George W. Brantley to displace C. W. Fish (temporarily assigned) from his position as second trick operator-leverman, Wilson Tower, (regularly owned by B. H. Whitley), and Fish in turn took his place on the extra list.

3. It declared the position of agent at Middlesex to be abolished effective July 6, 1956.

4. It declared the position of agent-operator at Bailey, North Carolina, to be abolished effective July 6, 1956.

5. It bulletined, under date of June 25, 1956, a position of agent-operator at Bailey-Middlesex and assigned Mr. J. S. Hatley to such position, effective July 6, 1956.

6. It permitted and required an employe not covered by the effective Agreement between the parties to act and assume the role and duties of agent-operator at Bailey during the period 10:00 A.M. to 12:00 Noon, Monday through Friday of each week, effective July 9, 1956.

7. It suspended and continues to suspend Mr. J. S. Hatley from his agent-operator's position at Bailey in requiring him to perform service at Middlesex beginning July 9, 1956.

The issue presented here is the right of the Carrier to abolish the position of agent-operator at Bailey and the one of agent at Middlesex, subsequently consolidating the functions of both positions.

The Organization urges that so long as work remains to be done at stations listed in the Agreement, the Carrier may not abolish the positions without negotiation. However, it has pointed out no provision of the Agreement to support this contention, and the awards cited are not persuasive.

It is well settled the Carrier has the inherent right to abolish positions and to rearrange work thereof subject only to such limitation, expressed in the Agreement, as may curtail or abridge that right.

We have searched in vain for any express limitation of the Carrier's right to act as it did in the instant case. Indeed a number of awards sustain this right, notably Award No. 11511 (Stark). And here, as in that case, a technical violation was committed in that an incumbent might have lost his job. The parallel is perfected too by the fact that circumstantially this did not occur and no time or pay was lost.

From an analysis of the record and for the reasons cited, we must 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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.