

Award No. 12478
Docket No. TE-11193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
HARRIMAN AND NORTHEASTERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Harriman and Northeastern Railroad that:

1. Carrier violated and continues to violate the agreement between the parties when, beginning on June 16, 1958, it transferred all the work of the position of Agent-Telephoner at Petros, Tennessee, outside the seniority district to employees of another carrier.
2. Carrier shall compensate Mrs. I. M. Hobbs, regularly assigned to the position of Agent-Telephoner at Petros, Tennessee, at the rate of the discontinued position, on each day the work is performed by others outside the seniority district.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Petros, Tennessee, is a station on this Carrier's lines. For many years a position of Agent-Telephoner, under the Telegraphers' Agreement, was maintained at this point performing agency service, not only for Petros, but for Coalfield, Blue Gem, Christmas and Stephens, all in Tennessee and all located on the H&NE.

Petros is located at the northern end of the railroad. Harriman, Tennessee, is 19.5 miles distant and located at the southern end of the railroad. The Southern Railway connects with this Carrier at Harriman. A joint agency is maintained by the two carriers at Harriman and the Station Agent at Harriman is an employee of the Southern Railway.

This Carrier made application to the Tennessee Public Service Commission to discontinue agency service at Petros and to dismantle the station. Hearings were held on this subject on April 29, 1958 at Harriman, Tennessee. During the hearing, evidence was presented by the Carrier showing that gross revenue was approximately \$200,000.00 per year which after applying Car-

OPINION OF BOARD: This claim is presented on behalf of Mrs. I. M. Hobbs, who was the regularly assigned Agent-Telephoner at Petros, Tennessee, until June 16, 1958. On that date her position was abolished and the work she had been performing was transferred to a joint agency at Harriman, Tennessee.

It is the Organization's contention that this work was transferred to persons who are not employes of the Carrier and who are not covered by this agreement and that this violates the rules of the agreement.

The agreement involved is somewhat unusual. The agreement is between the Order of Railroad Telegraphers and seven (7) separate Carriers, each being a separate legal entity. Although the entire agreement applies to each of the separate Carriers, the agreement provides in the first paragraph as follows:

"This agreement is entered into between Southern Railway Company, Georgia Southern and Florida Railway Company, St. Johns River Terminal Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company, The New Orleans Terminal Company and Harriman and Northeastern Railroad Company, respectively, and the employes of said carriers specified herein as represented respectively by The Order of Railroad Telegraphers, and is to be construed as a separate agreement by and between and in behalf of each of said carriers and its said employes enumerated herein as represented by The Order of Railroad Telegraphers." (Emphasis ours.)

The employes contend that the above language clearly indicates an intent that this agreement be considered and interpreted as 7 separate agreements between the Organization and each of the Carriers as a separate legal entity. We agree with this contention.

Treating the agreement between Harriman and Northeastern Railroad Company as a separate agreement, we find that the only position covered is at Petros. We further find that Rule 6 of the agreement guarantees eight hours' pay to each regularly assigned employe within each 24-hour period, except for rest days and holidays. Mrs. Hobbs was the only regularly assigned employe of the Harriman and Northeastern Railroad Company covered by the agreement between these parties.

It is admitted that some of the work previously performed by Mrs. Hobbs is now being performed by the joint agency at Harriman. This includes taking calls, signing orders and collecting demurrage. The employes at Harriman are listed as employes of the Southern Railway Company and are covered by the agreement with that company. They are not governed by the seniority rules of the agreement between Harriman and Northeastern and the Order of Railroad Telegraphers. Although they perform services for Harriman and Northeastern and are partially paid by Harriman and Northeastern, they are governed by a separate bargaining agreement.

As a result of the separation, Mrs. Hobbs is the senior employe of Harriman and Northeastern covered by the agreement. The abolition of her position and transfer of her work to someone outside the agreement destroys these seniority rights. This cannot be done except by agreement.

Award 752 involves a very relevant fact situation. Therein a clerk's position was abolished and the remaining duties were assigned to a clerk dispatcher, who was excepted from the agreement, and to other clerks employed in a joint agency at Harriman, who were in a separate seniority district from the abolished position. The Board sustained the claim that this violated the agreement and stated:

"As to assigning work within the agreement to other employees excepted from the scope thereof, this Board has consistently held such action to be in violation of collective agreements. It was so held on this particular carrier in Award Nos. 385 and 386. That principle is hereby reaffirmed. See Award Nos. 458, 631, 637, 736 and the preceding Award No. 751.

With respect to assigning the remaining clerical duties of the position in question to Clerks in a different seniority district, arbitrarily, this also, repeatedly has been held to be in violation of the seniority rules of collective agreements. Compare Award Nos. 99, 198, 199, 610, 612, and 718. Rule 4 (o) of the agreement between the parties here expressly prohibits the disturbance of existing seniority districts and the vice of so doing is pointedly evident in this instance since the employe displaced had no seniority elsewhere and upon the removal of the only work on his district was bereft of opportunity to exercise rights acquired through many years of service."

Carrier contends that they are merely abolishing the position at Petros and assigning the remaining work to other of their employees at the Harriman Office, a joint agency. In doing so, they contend that all of such employees are employees of Harriman and Northeastern Railroad Company. They attempt to treat all employees of the "Southern Railway System" as employees covered by one agreement. But this is contrary to the clear language the agreement which separates each agreement and which lists the position at Petros as the only position of the Harriman and Northeastern covered by the agreement with which we are involved.

The Carriers are inconsistent where they insist upon the basic agreement being treated as seven separate agreements, yet insist that the employees of either of the seven separate legal entities are employees of all of such entities in order to transfer work to persons not covered by the separate agreement.

We hold that so long as work covered by the Harriman and Northeastern Agreement remains to be performed, it must be performed by employees covered by the Harriman and Northeastern Agreement. It therefore follows that Mrs. Hobbs, being the only employe covered by the agreement, is entitled to pay for such work. The transfer of such work to employees of a separate Carrier, not covered by the Harriman and Northeastern Agreement, violates the Harriman and Northeastern Agreement. The Carrier shall compensate Mrs. Hobbs at the rate of the discontinued position for each day the work of her position is performed by others not covered by the agreement.

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 Agreement has been violated.

AWARD

Claim sustained.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of April 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12478
DOCKET TE-11193 (Referee West)**

The Southern Railway, the CNO&TP, and the H&NE (Harriman & Northeastern) are three of the eight carriers parties to the collective bargaining agreement effective September 1, 1949 between each of the eight carriers and its employees represented by the Order of Railroad Telegraphers. The H&NE is a 19-mile branch line, wholly within the State of Tennessee. It extends from Harriman to the State prison mines at Petros. It physically connects at Harriman with the Southern and the CNO&TP. Thus, three of the eight carriers covered by the effective Telegraphers' Agreement operate into and out of Harriman. Since March, 1917, Harriman has been a joint Southern-CNO&TP-H&NE agency. In all subsequent agreements up to and including the current agreement effective September 1, 1949, the respective parties allocated the existing agent position and clerk-telegrapher positions at Harriman to the Southern Railway Knoxville Division seniority roster and the existing agent position at Petros to the H&NE roster.

By 1958, due to complete discontinuance of commercial coal shipments from the State mines at Petros, the former volume of H&NE traffic and full-time workload of the agent position at Petros no longer existed. When carrier applied to the Tennessee Public Service Commission for authority to close its Petros agency, the former daily train service had dropped to one turnaround trip twice a week and the actual workload of the agent was only two hours for the entire week.

Carrier's Exhibit A is a copy of the Commission's order dated May 20, 1958, authorizing carrier to discontinue agency service at Petros, to dismantle the station building, and make Harriman the governing agency. It is obvious that this would add only an insignificant amount of clerical work to the Harriman agency. No consolidation of agencies was necessary. The separate agencies at Harriman were consolidated in 1917. Therefore, under the terms of the agreement between the respective parties, Harriman was already an H&NE station agency, and in making it the governing agency for Petros, no H&NE work was transferred to another carrier.

Rule 6 was not violated. So long as the agent position at Petros existed, the assigned occupant was subject to its guarantee provisions of "eight (8) hours pay within each twenty-four hour period, according to location occupied or position assigned * * *." When that position was abolished in accordance

with the specific terms of the agreement, the occupant was no longer a regularly assigned employe or subject to the guarantee provisions of Rule 6. The effective agreement contains no guarantee whatsoever of any number of assigned employes or positions. Nor can it be said that the parties froze, or even intended to freeze, the position of agent at Petros by listing it in the rate schedule of the printed agreement. The parties made this unmistakably plain by the following paragraph appearing on page 100 of the printed Telegraphers' Agreement:

"The listing of positions, with locations and rates of pay, is for the purpose of showing the established rates of pay of existing positions effective as of September 1, 1949, and shall not be construed to prevent the establishment of additional positions or the abolishment of existing positions at any time in accordance with the terms and provisions of this agreement."

Award 752, cited by the majority, is not analogous. That award turns the clock back twenty-five years. Although business was reduced, the H&NE was handling daily movements of coal from State Mines. In its Harriman office carrier reduced the force by abolishing the lower-rated clerk position and retaining the higher-rated excepted chief clerk position. The Clerks' Organization showed that more than four hours per day of duties of the abolished position, as itemized in the statement of facts, remained to be performed. There, both the office and a substantial portion of claimant's duties continued to exist.

It is impossible to reconcile the conclusions of the majority in Award 12478 with the Board's decisions in similar cases covered by Awards 5719 (Guthrie), 5803 (Carter), 8662 (Guthrie), and 12484 (Sempliner), as well as Award 23 (Ray) of Special Board of Adjustment No. 506. In each of those cases the agencies were closed and all remaining work of the abolished agent positions entirely removed from employes covered by the Telegraphers' Agreement to clerks at the governing agency. In Awards 5719, 8662, and 12484, certain remaining clerical work continued to be performed at the station where the agent position was abolished. In Awards 5803, 8662 and 12484, the agent position at the governing agency was not covered by the Telegraphers' Agreement. To illustrate the majority's refusal to follow the fundamental principles applied by the Board in similar cases, we quote the following from the Board's Opinion in Award 5803 (Referee carter):

"Whether or not a station shall be closed is a prerogative of management, subject to the interests of the public which it is the duty of the public service commission to protect. While the large income derived at these points makes it appear that a necessity for an open station exists, management has determined otherwise. The amount of revenue produced at a station is not a controlling factor in determining the need for an open station. No employes are being used at these points. With the closing of the stations the clerical work formerly performed by the agent-telegrapher is being performed by clerks at Yakima. This, we think, is in accord with the Agreement and the generally accepted practice.

An agent-telegrapher is entitled to perform all telegrapher's work, all supervisory work and any other station work, including that ordinarily performed by clerks, in order to fill out his job. When such a position is abolished and the remaining work is transferred to an adjacent or nearby station, the work belongs to the class of employes who customarily and traditionally perform it. It seems

clear to us that upon the discontinuance of the one-man stations at Tieton, Gleed and Naches, the remaining clerical work could properly be transferred to Yakima and be performed at that point by clerks. It is not work to which telegraphers have the exclusive right, although it was theirs under the circumstances existing at these points before the stations were closed and the agent-telegrapher positions were abolished.

It is the duty of management to operate its railroad with efficiency and economy. In so doing, it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employees of another craft who are entitled to perform it. The Carrier is, of course, limited by any agreement it has made in conflict with the method employed. We have found no rules which have been violated by the Carrier in closing these one-man stations and assigning the remaining work of the agent-telegraphers to those entitled to perform it. Awards 4939, 4992, 5288, 5318, 5719."

For the reasons stated, Award 12478 is patently wrong and we dissent.

R. A. DeRossett

R. E. Black

W. F. Euker

G. L. Naylor

W. M. Roberts