

Award No. 12945

Docket No. TE-10888

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Benjamin H. Wolf, 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 September 10, 1957, it improperly removed G. W. Brantley from his duly assigned position as agent at Knightdale, N. C.
2. It improperly, by such action, caused and permitted Brantley to displace Mrs. Lillie C. Spell from her position as agent at Walstonburg on September 12, 1957, who in turn elected to take her place on the extra list.
3. It improperly declared the position of agent at Knightdale, N. C., to be abolished effective September 10, 1957.
4. It improperly declared the position of agent-operator at Wendell, N. C., to be abolished effective September 10, 1957.
5. It improperly bulletined (Bulletin No. 4021) under date of August 28, 1957, a position of agent-operator at Wendell-Knightdale, and improperly assigned Mr. J. V. Pittman to such position effective September 10, 1957.
6. It improperly suspended and continues to suspend Mr. J. V. Pittman from his agent-operator's position at Wendell in requiring him to perform service at Knightdale, beginning September 10, 1957.

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

1. (a) Restore Mr. Brantley to the agency position at Knightdale 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 Knightdale to a minimum eight-hour daily basis as it existed prior to September 10, 1957.

4. (a) Restore the agent-operator's position at Wendell to a minimum eight-hour daily basis as it existed prior to September 10, 1957.

5. (a) Annul or otherwise render void Bulletin No. 4021 and the assignment made thereunder.

6. (a) Compensate J. V. Pittman, his successor and/or substitute, for one hour and thirty minutes at straight time rate for each day suspended from the agent-operator's position at Wendell while being required to perform service as agent-operator at Knightdale; also, for any expenses incurred for each of such services.

7. (a) Compensate the senior idle operator, extra in preference, a day's pay at the Knightdale agent-operator rate for each day the agent-operator position at Knightdale remains assigned to, and is occupied by, the agent-operator at Wendell.

EMPLOYEE'S STATEMENT OF FACTS: Carrier's main line extends from Norfolk, Virginia, to Charlotte, North Carolina, a distance of approximately 385 miles. Wendell, North Carolina is 211.4 miles westward from Norfolk, while Knightdale, farther on, is 218.6 miles from Norfolk.

A position of Agent at Knightdale has been covered by the Telegraphers' Agreement since October 1, 1919. At that time it was classified as Agent-Operator until August 15, 1930 on which date it was reclassified to that of Agent, non-telegraph. It has remained in that classification since. The current Agreement, effective August 1, 1937, (since amended) lists the position as follows:

"Knightdale A \$72.93 monthly"

The rate of pay has since been adjusted and on September 10, 1957 this position was rated at \$296.90 per month.

A position of Agent-Operator at Wendell has been covered by the Telegraphers' Agreement since October 1, 1919. It has continued to be an Agent-Operator's position. The current Agreement, effective August 1, 1937, (since amended) lists the position as follows:

"Wendell A.O. \$.67 hourly."

The rate of pay has since been adjusted and on September 10, 1957 this position was rated at \$2.050 per hour.

Both positions involved have been on an eight-hour daily basis since October 1, 1919.

Insofar as the State of North Carolina is concerned, the Carrier obtained authority to reduce the agency hours at these two stations by an Order in

the right of the carrier to abolish positions when there is no longer any work for that position, or where the volume of work has diminished to the point where it can be taken care of by another employe of the same class, and the action of the carrier is not violative of the agreement so long as any such residual work of an abolished position is assigned to and performed by an employe subject to the agreement. (See Award 6944).

Illustrative of the inconsistency of the petitioners' position where on the one hand they contend the entire action is violative of the agreement, they have on the other hand proposed—and a memorandum agreement was negotiated—allow these dualized agents an automobile mileage allowance in excess of the regularly established six cents per mile allowance which applies to all officials and employes, which agreement was made in consideration of the dualized agents using their personally owned automobiles every working day to travel between the agencies under their jurisdiction. Such agreement and the request therefor (Carrier's Exhibits "A" and "B" attached) show that the provision is for a stipulated round trip allowance to these agents, and such allowance is based on 12¢ per mile. In other words, the petitioners contend on the one hand that dualization is contrary to and violative of the agreement, while on the other hand they are agreeable to accepting a higher than established rate for these agents for the use of their automobiles. Conversely speaking, this actually represents a monetary consideration to these agents for the dualized services which consideration has been agreed to and accepted as evidenced by the exhibits attached.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to August 28, 1957, there was a full time position of Agent, non-telegraphic, at Knightdale, North Carolina, and a full time position of Agent-Operator at Wendell, North Carolina.

On August 26th, the North Carolina Utilities Commission authorized the reduction of the hours at both stations so that Wendell would be open from 8:00 A. M. to 11:45 A. M. and from 2:15 P. M. to 5:00 P. M., and Knightdale from 1:00 P. M. to 2:00 P. M. The Commission based its decision on the decline in business and because a hard surface State Highway parallels the railroad. The two stations are 7.2 miles apart.

On August 28th the Carrier posted a bulletin establishing a new position of Agent-Operator at Wendell-Knightdale, thereby abolishing the two former positions. Claimant Pittman bid, under protest, for the dualized position and was awarded it on September 10th. Claimant Brantley displaced Mrs. Lillie C. Spell who took her place on the extra list.

The issues in this case are substantially the same as those involved in Awards 12377, 12378 and 11511. We must deem the issues therein settled as far as this property is concerned. Those Awards hold that although there may be technical violations of the Agreement the fact that the incumbent of the former job that substantially remained (in this case the job at Wendell) did not lose his position, time or pay, warrants a denial of 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 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 9th day of October, 1964.