

Award No. 13096

Docket No. TE-12239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. The Carrier violated the terms of the Agreement between the parties, when on March 1, 1958, it declared abolished one (1) telegrapher position Swing No. 7 at Robbins, S. C., and on March 4, 1958, it declared abolished one (1) telegrapher position at Robbins, S. C., without in fact discontinuing the work and assigned the performance of this to employees not covered by the Telegraphers' Agreement; and
2. The two telegrapher positions at Robbins and the work thereof shall be restored to the Agreement, and the employees improperly displaced shall be returned thereto and compensated in accordance with Article 8 for each day held off their regular assigned position, namely: J. W. Johnson, R. B. Carroll, and A. D. Bigelow; and
3. All employees adversely affected by the Carrier's violative action in arbitrarily removing from the scope of the Telegraphers' Agreement the positions and the work thereof at Robbins shall be compensated for all monetary losses sustained.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in full force and effect a collective bargaining Agreement, effective November 1, 1939, entered into by and between Atlantic Coast Line Railroad Company and The Order of Railroad Telegraphers. The Agreement, as amended and supplemented, is on file with this Division and is, by reference, made a part of this submission as though set out herein word for word.

2. On the 24th day of May, 1937, in Case No. R-331, the National Mediation Board issued its certification of representation as follows:

"On the basis of the investigation and report of election the National Mediation Board hereby certifies that The Order of Railroad Telegraphers has been duly designated and authorized to rep-

What Carrier's actions at Robbins actually amounted to was the transferring of 30 minutes' work from joint employes at that point to joint employes at Augusta and Denmark for economic reasons. Sound business policy does not dictate that Carrier should retain a position where the occupant of an 8-hour assignment is idle approximately seven and one-half hours when other employes in the same class of service and craft are available and can be used. Due to the economic decline in the railroad industry, Carrier has, of necessity, been required to effect every economy possible consistent with its requirements. Certainly, it cannot be said that retention of the discontinued assignment at Robbins would be consistent and in the best interests of economy. Neither can it be said that its discontinuance was detrimental to Carrier's operations.

Carrier asserts that it is Management's prerogative to decide where its train orders will be issued and its telegraphic work performed, as long as the work is performed by employes of the craft entitled to do so, and emphatically denies that untenable circumstances should serve to deprive it of the services of joint employes to whose salaries Carrier contributes substantially or equally.

Carrier contends that the action taken at Robbins was justified, was not arbitrary, capricious or in bad faith, did not violate the agreement, and respectfully requests your Honorable Board to so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years, Carrier has maintained a telegraph office at Robbins, South Carolina, on a 24 hour basis. In the Agreement effective November 1, 1959, between these parties, three positions were negotiated to handle the usual duties of telegraphers and to handle the ground switch. Effective March 3, 1958, the third trick clerk-telegrapher position at Robbins was abolished. As a result, the 1:00 P. M. to 9:00 P. M. shift, Monday through Saturday, was blanked. The work previously handled during the blanked periods was transferred to telegraph employes not covered by this Agreement at Augusta, Georgia, and at Denmark, South Carolina. Claimants, employes adversely affected, file claims asking for restoration of the abolished position and for compensation.

It is admitted that some of the work previously performed by telegraphers at Robbins during the blanked period, and belonging to them under the Scope of the Agreement, is now being performed by telegraphers at Augusta and Denmark, who are not covered by the Agreement involved. This included copying train orders and directing train movements. Although it appears that Carrier contributes to the compensation of the telegraphers at Augusta and Denmark, such employes are governed by separate bargaining Agreements.

This Board has held in a long line of decisions that Carriers have the right to abolish a position when the work of the position no longer exists, but they do not have the right to take work out from under an Agreement and turn it over to others not covered by the Agreement (see Awards 753, 951 and 12478). Here the work previously performed by Carrier employes during the blanked periods is now being performed by employes not covered by the Telegraphers' Agreement with the Carrier. The fact that the persons now performing these services are covered by some other Agreement or that Carrier contributes to their compensation does not alter the fact that work has been wrongfully taken from persons covered by this Agreement.

Despite a finding that the work was wrongfully transferred to non-covered employees, we are unable to sustain the claim made to restore the position. This Board has frequently held that we are not authorized to restore positions abolished, but can only render compensatory damage or other appropriate remedies. We believe that the appropriate remedy in this case would be to compensate the employees affected for the time lost by reason of the wrongful blanking of this position and the transfer of this work. This compensation should, however, be reduced by the earnings of Claimants in other employment. It can be further reduced by amounts which could have been earned by such employees in other employment of a similar nature and position and in the same general location.

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

The claim should be sustained in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1964.