

Award No. 13323

Docket No. TE-12140

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when it purportedly abolished the position of Assistant Agent and Operator at Twelfth Street Station, Lynchburg, Virginia, and transferred all the work thereof to employees not covered by the Agreement.

2. Carrier shall compensate H. G. Long, regularly assigned occupant of the position, and R. B. Orange, regularly assigned Operator and Leverman, Pemplin, Virginia (displaced by Long), for all wages lost plus expenses while away from their regularly assigned positions commencing July 11, 1959, and continuing thereafter until the violations are corrected.

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

Twelfth Street Station, Lynchburg, Virginia, is located on the Durham District of this Carrier's lines. Ninth Street Station, Lynchburg, Virginia, is located 2.3 miles north of Twelfth Street Station.

Twelfth Street Station was at one time the northern terminus of the Lynchburg and Durham railroad. The Norfolk and Western acquired the L&D sometime around the turn of the century. Thereafter the Twelfth Street Station has been an N&W station. There has been a position under the Telegraphers' Agreement at this station for almost sixty years, it appeared in the wage scale of the Agreement effective January 1, 1903. There were never any positions under the Telegraphers' Agreement at the Ninth Street Station, it was and is in charge of a supervisory appointive agent with additional station force under the Clerks' Agreement; the communication service for Ninth Street Station is furnished through the telegraph offices at either Island or Lynchburg Tower—both adjacent to Ninth Street Station. The position at Twelfth Street Station was for many years that of Agent and Operator; about 1939 it was changed to Assistant Agent and Operator. It was always a one-

who customarily and traditionally perform it. It seems clear to us that upon the discontinuance of the one-man stations at Tieton, Gleeed 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, 5283, 5318, 5719."

The Carrier submits that when on July 11, 1959, it transferred to clerical employees at Ninth Street Freight Station the clerical work formerly performed on the abolished Assistant Agent and Operator position it did not violate Rule 1 of the Telegraphers' Agreement as alleged by the Employees because there is no reservation of clerical work to telegraphers by such Rule 1.

The Carrier's position as set forth in this submission clearly proves there is no merit whatever to the Employees' claim in this case.

Denial of the claim in its entirety is respectfully requested. (Exhibits not reproduced)

OPINION OF BOARD: For some years prior to July 11, 1959, Carrier had a one-man freight station in Lynchburg, Virginia, known as the Twelfth Street Station (herein called the Station). The position was Assistant Agent and Operator (herein called the Position). On the aforesaid date Carrier discontinued the Station, abolished the Position, and transferred the work remaining to the clerical employees at its Ninth Street Freight Station, which was 2.34 miles from the former Twelfth Street Station.

Telegraphers contend that: (1) the position should not have been abolished while there remained any work to be done at the Station; (2) the occupant of the Position had the contractual right to follow the work of the Position; (3) the work of the Position could not be taken from under the Telegraphers' Agreement except by negotiation of the parties.

The undisputed material facts are: (1) the Position is listed in the Schedule of Wages in the Agreement; (2) at the time of abolishment the occupant of the Position performed no telegrapher duties and less than three hours work remained, all of which was clerical; (3) the remaining work was transferred to the Ninth Street Station and assigned to clerical employees who, in the performance of some of it, went into the area formerly serviced from the Station.

The thrust of Telegraphers argument is that a position established pursuant to the Agreement cannot be abolished and the work remaining be assigned to employees of another craft or class. This argument was proffered in Award No. 5803 (Carter), wherein it was held:

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"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 employees 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 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, 5283, 5318, 5719."

Inasmuch as we do not find any Rule in the Agreement which circumscribed Carrier's right to abolish the Position, we hold that Carrier did not violate the Agreement when it assigned the remaining clerical work to the class of employees who customarily and traditionally perform it. We will 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

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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 25th day of February 1965.

DISSENT TO AWARDS 13323 AND 13324,
DOCKETS TE-12140 AND TE-14038

In my opinion these awards are erroneous, and I am therefore compelled to dissent.

The first error is failure of the majority to recognize that work covered by the telegraphers' agreement consists of many things in addition to "telegrapher duties" as that term is employed in the Opinion of Board in Award 13323. Obviously, little consideration was given to my dissertation on the duties of a station agent and the resulting right of such employes to perform those duties regardless of whether "telegrapher duties" are also required, even though my views were not disputed.

Further error is made manifest by failure to recognize the unique nature of the scope rule of this particular agreement, which clearly relates the coverage to positions listed in the wage scale, "... irrespective of title by which designated or character of service performed." If the quoted language does not reserve to the employes covered the work of the positions listed—regardless of the character of service performed—as long as the work remains, then the parties were entitled to be told why.

Instead, the majority merely relies on Award 5803 which, aside from being erroneous itself, did not deal with a scope rule such as we have here. The result is two more erroneous wards, and I dissent.

J. W. WHITEHOUSE
Labor Member