

Award No. 13368
Docket No. TE-12771

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Great Northern Railway, that:

1. The Carrier violated the terms of the Agreement between the parties when the company merged the position of Agent, Hibbing, Minnesota, covered by the Agreement and held on assignment by L. S. Rutter, with a position not so covered, resulting in the merged position being bulletined and assigned to another employee; and

2. That L. S. Rutter, who was regularly assigned to the position of Agent, Hibbing, Minnesota, covered by the Agreement and improperly displaced therefrom, shall be restored to the position of Agent, Hibbing, and paid for any and all financial losses he incurred by reason of the Agreement violation.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective September 1, 1949, and as otherwise amended.

At pages 43 and 44 of said Agreement are listed the positions existing at Hibbing, Minnesota, on the effective date thereof. The listing reads:

| "Location | Classification | Hourly Rate |
|---------------------------------|-----------------|-------------|
| South Hibbing Freight Station | Agent | \$1.68 |
| South Hibbing Passenger Station | 1st Telegrapher | \$1.55 |
| South Hibbing Passenger Station | 2nd Telegrapher | \$1.55" |

At page 15 of an Agreement between the petitioning Organization and the Great Northern Railway as represented by the United States Railroad Administration, effective April 1, 1919, are listed the positions existing at Hibbing, Minnesota, on the effective date of this Agreement. The listing reads:

| "Stations | Occupation | Hourly Rate |
|-----------|------------|-------------|
| Hibbing | A | .88¼ |
| Hibbing | T | .59¼ |

Note: A-Agent, T-Telegrapher."

At no time during the extensive discussions of this case on the property did the Organization cite any rules or agreements which were allegedly violated by the Carrier's action. The only basis offered for the claim at any time was citation of Awards 299 and 731 of this Board in the Organization's letter of April 19, 1960, addressed to the Carrier's Division Superintendent. (See Carrier's Exhibit C-18.) Both awards are easily distinguished. Award 299 held that it was improper to remove a fully-covered agent from one point and replace him with a fully-exempt agent from another point. Award 731 held that the duties of a fully-covered assistant Agent could not be transferred to a fully-exempt agent. The facts in neither case bear any resemblance to the facts in this case.

In addition to all the other reasons for denial of this claim, there could be no relief granted in any event. The Organization's claim demands restoration of the claimant to his position at Hibbing. However, this Board has consistently held that ordering the Carrier to restore employes to positions was not its function and beyond its jurisdiction. See Third Division Awards 5572, 7168 and 7222, among many others.

The Organization also demands payment of claimant's financial losses. However, there has never been any allegation that the claimant suffered any financial losses. Ever since the day his position was abolished in the Hibbing Passenger Depot, the claimant has been employed on positions paying substantially higher rates of pay.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The Organization is estopped by the action of the claimant and the Agreement made by the General Chairman from alleging that the Carrier's action constituted a violation of any rule or agreement.
2. Even if there were no estoppel, the Organization has never cited rules or agreements which were allegedly violated.
3. In any event, there have been no damages suffered by the claimant and no relief could be granted.

For the foregoing reasons the Carrier respectfully requests that the claim of the Organization be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier abolished the position of General Agent (not under the Agreement) and the position of Agent-Telegrapher (covered by the Agreement) and then established a position of Agent. The Carrier bulletined the new position. The General Chairman objected to the rate of pay for the new position. The Carrier entered into an Agreement with the General Chairman as follows:

Memorandum of Agreement on October 15, 1959:

"This will confirm our agreement in conference on October 15, 1959 that in consideration of the creation of a new position of agent at Hibbing, Minnesota, whose assigned duties shall combine the responsibilities of both freight and passenger work, the basic hourly

rate of pay of the agent-telegrapher at Hibbing shall be increased to \$2.61 per hour, effective October 12, 1959, plus applicable cost-of-living allowances, presently .13¢ per hour."

The above Agreement is binding upon the parties. The General Chairman entered into the above Agreement concerning the new position. Such action estopped the Petitioner from now contending that the creation of the new position was a violation of 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 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 26th day of February 1965.