

Award No. 13622

Docket No. TE-12782

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that:

1. The Carrier violated the terms of the Agreement between the parties when, on February 10, 1960, it unilaterally declared abolished the 7:30 P.M. to 3:30 A.M. telegrapher-clerk position at Edwards, California, and assigned the work of this position to a newly established clerical position not covered by the Telegraphers' Agreement.
2. The work comprising the 7:30 P.M. to 3:30 A.M. telegrapher-clerk position at Edwards, California, shall be restored to the Agreement.
3. Carrier shall now be required to compensate C. W. Weatherly eight hours' pay at the rate of the 7:30 P.M. to 3:30 A.M. telegrapher-clerk position at Edwards each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the 7:30 P.M. to 3:30 A.M. telegrapher-clerk position at Edwards, plus actual necessary expenses incurred each day required to work at a station other than Edwards.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

This dispute concerns the Carrier's unilateral abolishment of the second shift telegrapher-clerk position at Edwards, California, and the transfer of work formerly performed by the telegrapher-clerk to a clerical position.

February 11, 1960, the date the instant claim arose. Therefore, by reason of his being on authorized leave of absence due to his health, he was not and has not been available for service on or since February 11, 1960 and therefore lost no compensation whatever as a result of the abolishment of the 7:30 P. M. to 3:30 A. M. telegrapher-clerk position on February 11, 1960 and has no right under the Agreement rules to the penalty compensation claimed in his behalf.

* * * * *

In conclusion, the Carrier respectfully asserts that (1) the Employees have, in their presentation and handling thereof on the property, failed to meet their burden of proof of an agreement violation and (2) the employees' claim in the instant dispute is wholly without support under the agreement rules and should be denied for the reasons previously set forth herein.

OPINION OF BOARD: This dispute arose when Carrier abolished position of Clerk-telegrapher at Edwards, California, effective at the end of the tour of duty on February 10, 1960. The assigned hours of the position were 7:30 P. M. to 3:30 A. M.

It is not disputed that one of the primary purposes in maintaining this position was the handling of train orders and other communications affecting the movement of trains. Effective February 11, 1960, the Carrier placed into effect on the Mojave District, which includes Edwards, a Centralized Traffic Control system, eliminating the need for train orders at this point. Disputes between the same parties relative CTC installations and operation of same were disposed of in Awards 8143, 9209 and 13518.

After the abolishment of the position, beginning February 11, 1960, and until February 29, 1960, the record does not indicate that anyone performed service during the assigned hours of the former position. However, on February 29, 1960, Carrier assigned the Ticket-Clerk at Edwards to work 7:00 P. M. to 3:30 A. M. The former hours of the Ticket-Clerk were 8:30 A. M. to 5:30 P. M. This position was abolished by the Carrier on October 25, 1960.

The rearrangement of the hours of the Ticket-Clerk constitutes the basis for the Union's contention that work of the Clerk-telegrapher's position was transferred to a "newly established clerical position not covered by the Telegraphers' Agreement". It is alleged that the Scope Rule was violated. This rule reads, in part:

"This Agreement governs the wages, working conditions and compensation of employees on positions of:

* * * * *

and such other positions as may be shown in the appended wage scale or which may hereafter be added thereto."

The positions of Agent-telegrapher and Telegrapher-Clerk at Muroc (now Edwards) are shown in the Wage Scale.

The Carrier contends that the position was abolished because a primary work requirement was eliminated due to the installation of the CTC system of train control. There is no evidence to show that anyone performed service

during the hours of the abolished position for the period February 11, through February 28, 1960. Thus, the claim that the Agreement was violated on February 10, 1960, when the position was abolished is not supported by any evidence.

The claim based on the rearrangement of the hours of the Ticket-Clerk fares no better. Although there is a showing, generally, of the duties of the Clerk-Telegrapher position, prior to abolishment, and assignment of some of those duties to the Ticket-Clerk position, beginning February 29, 1960; no proof is offered, except in one instance, to show that the Ticket-Clerk performed any service belonging exclusively to the Telegraphers at this location. The allegation that on May 12, 1960, the Ticket-Clerk handled communications, would not support the claim that the Agreement was violated in the job abolishment on February 10, 1960 or rearrangement of the work force on February 29. Furthermore, the general outline of duties, without more, does not provide the necessary proof. When we take into consideration the fact that the work requirements were such that the Carrier was able to dispense with the Ticket-Clerk position on October 25, 1960, leaving only the Agent-telegrapher, the inference is clear that the work load was light.

A careful review of the record does not reveal evidence to support the position of the Union that work, reserved by agreement to the Clerk-Telegrapher position, was performed by anyone else. Instead, the record supports the Carrier's contention that elimination of work permitted the force reduction; that the rearrangement of hours of the Ticket-Clerk did not require his performing any work that had not been customarily performed by either craft or class at this station.

The undisputed facts in the instant case clearly distinguish this dispute from the disputes involved in Awards 13074 and 13075, therefore, no further comments are necessary, as the Petitioner, having failed to sustain the burden of proving the substantive violation, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 28th day of May 1965.