

Award No. 14101
Docket No. TE-13101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Gulf, Colorado & Santa Fe Railway, that:

1. The Carrier violated the terms of the Agreement between the parties when, on August 5, 1960, it unilaterally assigned agency work of the Alvarado, Texas, agency position to a newly established clerical position not covered by the Telegraphers' Agreement.

2. The agency work shall be returned to the Agreement.

3. For extra employes L. C. Ridgeway, J. D. Blankenship, F. P. Nichols, L. H. Bowden, T. E. Bagby, L. E. Woods, T. J. Carlisle, B. J. Priest, B. G. Dean, J. H. Stevenson and T. R. Ellis, the Carrier shall be required to compensate the senior extra employe named above who is idle for eight hours' pay at the pro rata rate for each day the agency work of the Alvarado agency is performed by a clerical employe beginning August 5, 1960.

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

At page 85 of said Agreement, the following positions are listed:

"Joshua — Agent-Telegrapher 1.625

* * * * *

Alvarado — Agent-SNT 1.503"

The basic rates above shown have been increased as a result of agreements adopted subsequent to June 1, 1951.

The term "SNT" appearing in the classification of the position at Alvarado indicates that it is a small non telegraph agency position.

Claimants here have not conclusively established their right to perform the work in question to the exclusion of others similarly employed, either through custom and practice on this property or under the terms of the contract. Thus, in effect, this Board is being asked to grant something the agreement does not provide. The rule that we are without authority so to do is too well established to require further comment." (Emphasis ours.)

A denying award in the instant dispute is obviously in order on the basis of the conclusions expressed in Award No. 8538.

As to the penalties claimed in behalf of the extra employees named in Item (3) of the Employees' claim, the Carrier respectfully reasserts that, even if employees subject to the Telegraphers' Agreement had had an agreement right to the clerical work claimed in the instant dispute, and the Carrier has proved conclusively that they did not, the Petitioner has not and cannot show that any of the named extra employees were either qualified to perform the work or would have been available. In this connection, the Carrier also directs the Board's attention to the conclusions expressed by the majority in recent Award No. 10036 of the Third Division in support of their denial of a claim for wage loss sustained by an employee who had been dismissed but whom the majority had held should be reinstated to service:

"The Claimant must, therefore, be reinstated to the service of the Carrier with seniority and all other rights unimpaired. However, no back compensation will be paid the Claimant because he was an unassigned employee on the Extra Yard Clerk Board and one cannot determine with certainty where, when, and how much he would have worked. In such situations—the question of physical fitness and ability to work must be considered in relation to jobs' available. Furthermore, there was no proof offered as to the Claimant's compensatory loss."

In conclusion, the respondent Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Telegraphers' Agreement and should, for the reason stated herein, be either dismissed or denied in its entirety.

OPINION OF BOARD: The Agreement between the parties lists a position of Agent-Telegrapher at Joshua and a position of Agent-SNT at Alvarado, which is a few miles away from Joshua. Prior to June 17, 1957, each of the agencies was operated full time (5 days—8 hours) and each of the positions had a full time occupant. Effective on that date, Carrier made each agency a part time agency, abolished the position of Agent-SNT at Alvarado and changed the assignment of the Agent-Telegrapher position at Joshua to work four hours at the Joshua Agency, three hours at the Alvarado Agency and the remaining hour of the day traveling from Joshua to Alvarado and back. The claim of Telegraphers that these acts of Carrier violated the Agreement is not the claim in this case, but was submitted to this Board for adjudication under Docket TE-10247, decided in our Award No. 11294, dated April 3, 1963. Prior to our decision in that case the herein involved claim was filed.

On August 5, 1960, Carrier assigned a clerk, not covered by the Telegraphers' Agreement, but by Carrier's agreement with the Clerks, to assist in

the handling of waybills and accounting, when, due to a temporary increase in business at the Alvarado Agency, the work became too much for the Joshua agent to handle in addition to the normal work of his regular Joshua-Alvarado assignment. Telegraphers' claim in this case is that the unilateral assignment of the involved work to the clerk position improperly and in violation of the Agreement removed work from the Alvarado agency position covered by the Telegraphers' Agreement to a position not covered by Telegraphers' Agreement.

Telegraphers argued that since the work belonged exclusively to Telegraphers and it was obvious that the work was too heavy at Joshua and Alvarado to be handled by the one agent, each agency should have been made a full time agency with a full time agent position assigned to each.

Carrier argued that the Agreement does not forbid the assignment of a clerk, not covered by the Telegraphers' Agreement, to assist the agent assigned to both Joshua and Alvarado in the temporary overflow of clerical work; that such overflow clerical work at a station does not belong exclusively to Telegraphers, but, under the ebb and flow principle established by the Board, to the Clerks.

At bottom Telegraphers' argument is based on their assumption that the Agent-SNT position at Alvarado was not properly abolished, and that in any case, it should have been restored with the increase of work. But the claim that the position had not been properly abolished was being adjudicated in another proceeding before this Board. From the evidence in this record, and because the propriety of the abolition of the position was not the issue presented and debated on the property in this, but in another case, we cannot find in this case that the Alvarado Agent-SNT position was improperly abolished; we must proceed with our consideration of the herein involved claim from the fact that the regular assignment of the one agent was to work part time at the Joshua Agency and part time at the Alvarado Agency, and from the assumption that such assignment was proper.

There remains Telegraphers' argument that when the agency work increased at Alvarado a full time agent position should have been added to perform the work rather than a full time clerk position.

Starting with the fact that the one full time agent position regularly covered the normal agency work at both Joshua and Alvarado, the temporary overflow of clerical work which could not be handled by him in his regular hours was without violation of the Telegraphers' Agreement, properly assigned to a clerk under the ebb and flow principle. Absent an assumption that the Agent-SNT position at Alvarado must be considered not to have been abolished, Telegraphers, in order to sustain their claim in this case would have to supply evidence adequate to prove that such overflow clerical work belongs exclusively to them. Such evidence is not in the record. We will deny the claim.

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 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 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 24th day of January 1966.