



Award No. 14437
Docket No. TE-12135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

1. Carrier violated and continues to violate the Agreement between the parties when, effective October 18, 1958, it declared the position of agent-telegrapher at Villa Park, Illinois abolished and requires the agent-telegrapher at Elmhurst, Illinois to suspend work on his regular position and perform the work of the purportedly abolished position at Villa Park.
2. Carrier shall be required to restore the position of agent-telegrapher at Villa Park, together with the work accruing thereto, and fill it in accordance with the applicable rules of the Agreement.
3. Carrier shall be required to compensate the occupant of the agent-telegrapher position at Elmhurst, Illinois (F. S. Schilling, October 20 through November 14, 1958), L. E. Steinke or his successors, in the amount of a day's pay (8 hours) on each work day, Mondays through Fridays, in addition to pay already received, commencing November 17, 1958 and continuing thereafter until the violation is corrected.
4. Carrier shall be required to compensate, commencing on October 20, 1958 and continuing thereafter until the violation is corrected, the senior idle employe on the seniority district, extra in preference, in the amount of a day's pay (8 hours) on each work day of the position Mondays through Fridays.

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

Villa Park, Illinois is a station 18.5 miles west of Chicago with an annual gross revenue between \$360,000.00 and \$400,000.00. Prior to the time cause for this claim arose, there was one position of agent-telegrapher at this station with assigned hours 7:30 A. M. to 11:30 A. M. and from 12:30 P. M. to 4:30 P. M., a five day position with assigned rest days of Saturday and

"THE ORDER OF RAILROAD TELEGRAPHERS

Chicago Great Western System

Division No. 96

Manning, Iowa

September 12, 1959

Re: Claim No. HT-2.97

Your File: 0-319

**Mr. D. K. Lawson, Vice President-Personnel
Chicago Great Western Railway
700 Mulberry Street
Kansas City 1, Missouri**

Dear Sir:

Reference exchange of correspondence ending with my letter of July 31, 1959 in the above claim which is being progressed account transfer of work at Villa Park, Illinois.

Case was discussed in conference in your office on August 28, 1959 at which time the parties were unable to settle the claim and the respective positions were reaffirmed. The undersigned cited several Awards of the Third Division in support of the claim among which were Awards 8374, 6937, 6468, 6451, 6290, 5641, 5375, 5507, 5384, 5365, 4576 and 3659.

In the Awards you cited to me in conference, I do not find any that parallel the instant case. Our position is substantially as outlined in the file and we cannot accept your decision as final.

Very truly yours,

**/s/ L. M. Kingsbury
General Chairman."**

OPINION OF BOARD: On October 20, 1958, the Carrier abolished the position of agent-telegrapher at Villa Park, Illinois, discontinued the agency and changed the status of the station to a non-agency prepay station under the jurisdiction of the agency at Elmhurst, Illinois. Thereafter, the agent-telegrapher at Elmhurst was required to perform the duties in connection with the business still remaining at Villa Park.

On the merits the Employees cite and rely on the line of awards expemplied by Award 388, contending that the agent-telegrapher at Elmhurst is required to go to Villa Park daily, or at least frequently, to perform work in connection with business at the latter station. The Carrier denies any such requirement, admitting however that for a time the agent-telegrapher did go to Villa Park and pick up certain bills of lading. It contends that such trips were not authorized or required. The Employees dispute this contention.

This conflict is immaterial for, in any event, the agency at Villa Park was in fact discontinued and the agent-telegrapher assigned to Elmhurst does not occupy two distinct agencies as was the case in the awards relied upon by the Employees. It follows that the basic principle established and applied by that line of awards (388, et seq.) cannot be applied to the present case.

The facts of the present case bring it squarely in line with Award 1670. The following excerpts from the Opinion of Board, Referee Garrison assisting, are particularly applicable here:

"The fact situation is a novel one. In Award 388 of this Division, the briefs and entire record of which we have carefully reviewed, and in several Awards subsequent thereto which followed the principle of Award 388, the hours of work at two adjoining stations were reduced; the agent at one was laid off, and the agent at the other divided his time between both. The stations were kept open (during reduced hours) for the normal transaction of business; and separate agency accounts were maintained as before. It was held that the agent laid off was improperly laid off because his agency had not been abolished; the reduction of hours was accomplished and nothing more.

Much more than this was done at Winkelman and therefore the case cannot be disposed of merely by citing Award 388 and those which have followed it. Nor have we been referred to any other Award which is strictly in point.

We have to ask this question: is the Hayden-Winkelman situation **more** like that presented in Award 388, or **more** like that of an agency with a non-agency station adjacent to it? For it is not exactly like either.

It departs from the situation in Award 388 in that the Winkelman station has been entirely closed, and all its equipment removed (with no evidence that any substitute office facilities in Winkelman have been arranged for); its separate accounts have been abolished; no telegraph service is rendered there; and the station is listed by the ICC as a non-agency prepay station.

* * * * *

On the basis of the whole record we have concluded that what really happened was that the Winkelman agency was abolished and Winkelman became a non-agency station, subject to the Commission's requirement that the Hayden agent should make one visit to Winkelman a day instead of at the Carrier's uncontrolled discretion. It would seem to us a more strained interpretation of the facts to hold that the agency at Winkelman continued to exist with a mere reduction of hours.

We intend by this decision no weakening of the principle of Award 388, nor to foreclose the consideration of cases where facts may lie somewhere in between those presented in Award 388 and those presented here."

This reasoning is reaffirmed and, being directly applicable to the facts here, is dispositive of the present case. The claim, accordingly must be denied.

Carrier raises certain procedural objections in the record. Because of the disposition of the case, we consider it unnecessary to pass on these points.

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 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 20th day of May 1966.