

Award No. 14445
Docket No. TE-12066

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway (Pere Marquette District) that:

1. The Carrier violates and continues to violate the agreement between the parties when it purportedly abolished the position of agent at Mt. Morris, Michigan and transferred the work to employees at Flint, Michigan, not covered by the agreement.
2. Carrier shall compensate D. O. Kern, regularly assigned occupant of the position, for all wages lost commencing February 28, 1959, and continuing thereafter until the violation is corrected.
3. Carrier shall also compensate the senior, idle employe (extra in preference) in the amount of a day's pay on each day of the position commencing February 28, 1959, and continuing thereafter until the violation is corrected.

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

Mt. Morris, Michigan is a station on this Carrier's lines between Plymouth and Saginaw about seven miles north of Flint, Michigan. Prior to January 5, 1959, since railroad service was first established at Mt. Morris, there has been an agent-operator there who was responsible for and entitled to perform all the agency work at this one man agency. The station at Flint is in charge of a supervisory agent, filled by appointment, excluded from the coverage of the Telegraphers' Agreement. The station force at Flint, in addition to the agent, consists of clerks under another agreement. All of the work of the one-man station at Mt. Morris, accounting, way-billing, freight bills, bills of lading, demurrage, supervision, etc., were transferred to the supervisory agent at Flint.

Claim was filed on April 28, 1959, retroactive sixty days in accordance with the Time Limit Rule and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting the handling on the property is attached hereto as ORT Exhibits 1 through 11.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is an agreement between the parties to this dispute, which agreement is identified as effective September 1, 1958. Copies of this agreement have been filed with your Board and are by this reference submitted as evidence in this case.

On October 17, 1958 this Carrier posted and published notices as required by the Michigan Public Service Commission indicating intent of this Carrier to close its freight station in the village of Mt. Morris, located in the metropolitan area of Flint, Michigan, three and four-tenths miles north of our freight station at Flint, one and four-tenths miles north of our Flint switching limits. Mt. Morris is four and eight-tenths miles distant from the next nearest station.

Mt. Morris was a one-man station, manned by an agent-operator covered by the Telegraphers' agreement. Installation of Centralized Train Control through the stations above referred to years ago had removed all necessity for train order work at the station, and no passenger trains have operated in the territory for many years.

Michigan Public Service Commission regulations permit freight stations to be closed, i.e., placed in a "Prepay" status without hearing, in the event no protest is received by the Commission following the posting and publishing of notices referred to.

No protest of Carrier's announced closing of Mt. Morris station was received and this freight station was closed on January 20, 1959. The position of Agent at Mt. Morris was abolished and Mt. Morris became a non-agency, prepay station under published tariffs. The station accounts formerly handled at Mt. Morris, which included two non-agency branch line stations, Rogersville and Otisville, as well as Mt. Morris, were thereupon transferred to Flint station. The agent position at Flint is a supervisory position, not covered by any agreement. Clerks, but no telegraphers, are employed in the agent's office at Flint. The agent at Flint, the assistant agent, both positions not covered by the Telegraphers' agreement, and clerks, covered by an agreement between this company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees perform that portion of the work formerly performed by the agent-operator at Mt. Morris which has been transferred to Flint.

OPINION OF BOARD: We must conclude, after a careful consideration of the record in this case, that the Employees have failed to establish that the Agreement was violated. And since the burden of proving such a violation lies with the Employees we must 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 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.