



Award No. 14709
Docket No. TE-12221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
— WESTERN LINES —**

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

1. The Carrier violated the terms of the agreement between the parties when, on June 8, 1959, it unilaterally declared abolished the position of first trick telegrapher-clerk at Kiowa, Kansas, and assigned the work of this position to the reclassified position of agent-telegrapher and to a newly established clerical position not covered by the Telegraphers' Agreement.

2. The position of the first trick telegrapher-clerk at Kiowa, Kansas, shall be restored and the work thereof returned to the agreement.

3. Carrier shall now be required to compensate Billy R. Martin, senior, extra telegrapher for 8 hours' pay at the rate of the first trick telegrapher-clerk position at Kiowa, Kansas, for each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the first trick telegrapher-clerk position at Kiowa, Kansas, plus actual expenses incurred each day he works at a station other than Kiowa, Kansas.

4. In the event Billy R. Martin became ineligible by change of status, the Carrier shall be required to compensate Charles E. Black, the next senior, extra employe for eight hours' pay at the rate of the first trick telegrapher-clerk position at Kiowa, Kansas, for each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the first trick telegrapher-clerk position at Kiowa, Kansas, plus actual expenses incurred each day he works at a station other than Kiowa, Kansas.

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 first shift telegrapher-clerk position and reclassification of the agent's position to agent-telegrapher, without conference or negotiation, at Kiowa, Kansas, and the transfer of work formerly performed by the agent and telegrapher-clerk to a newly established clerical position.

ciple that a telegrapher has a right to perform any clerical work up to his capacity in order to fill out his assignment and it is only when clerical work at stations such as Kiowa, Kansas, exceeds that which can be handled by telegraph service employes that it belongs to clerks and whenever it again recedes to the point where telegraphers can handle all of it then it belongs to the telegraphers from whence it came. Kindly refer to a sustaining decision of the NRAB in Award 7409, when the Board said 'But Carrier is not authorized to abolish a position and assign the work to employes in another organization when such work has been performed over a period of many years and it has become an established custom and practice as in this case, for the telegraphers to perform the work such action constitutes a violation of the Agreement as Carrier herein did abolish the first trick operator position while the work remained and it was subsequently assigned to an employe outside the Telegraphers' Agreement.'

Section: In reference to Awards 7653 and 8357 cited on page 2 of your letter November 11, 1959, Award 7653 involved a dispute whereby work performed by an agent, an employe covered by the Telegraphers' Agreement, was transferred to an operator clerk also covered by the Telegraphers' Agreement and therefore have no bearing on this instant dispute. Award 8375 involved a dispute whereby an exclusive freight agent position was abolished and part of the duties were assumed by an agent telegrapher and part of the duties were assumed by a cashier-clerk and therefore have no bearing on the instant case where a position covered by the Telegraphers' Agreement was abolished while the work of the position remained to be done and the bulk of the remaining work was assigned to a newly created clerical position not covered by the Telegraphers' Agreement.

Third: Although on leave of absence Extra Telegrapher Billy R. Martin was the senior telegraph employe on the extra board on June 8, 1959. Since Telegrapher Martin did not return to service following the expiration of his sixty-day leave of absence, Telegrapher Charles E. Black was the senior extra telegrapher beginning July 31, 1959, therefore the claim is for Telegrapher Martin from June 8, 1959, to July 30, 1959 and for Telegrapher Charles E. Black, beginning July 31, 1959.

Yours truly,

/s/ K. A. Vose J.F.
Acting General Chairman

JWF:mf''

OPINION OF BOARD: Carrier unilaterally reclassified the Agent's position to Agent-Telegrapher, abolished the first trick Telegrapher-Clerk position, established a new Cashier position, and transferred the clerical duties of the Agent and Telegrapher-Clerk, covered by the Telegraphers' Agreement, to the new Cashier covered by the Clerks' Agreement.

The facts in this case are substantially the same as those in Award 14708, involving the same parties, the same Agreement and identical contentions. For the reasons therein set forth, we will find the Agreement violated in this case and sustain the claims to the same extent as we did in Award 14708.

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 Carrier violated the Agreement.

AWARD

Claims sustained with the same modifications and to the same extent indicated and set out in Award 14708.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.

**CARRIER MEMBERS' DISSENT TO
AWARD 14709 - DOCKET TE-12221**

(Referee Dolnick)

For purpose of this dissent we adopt dissent to Award 14708 - in Docket TE-12217.

/s/ **T. F. Strunck**
T. F. Strunck

/s/ **R. E. Black**
R. E. Black

/s/ **P. C. Carter**
P. C. Carter

/s/ **G. C. White**
G. C. White