



Award No. 14710
Docket No. TE-12228

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES 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 May 14, 1959, it unilaterally declared abolished the position of first trick telegrapher-clerk at Artesia, New Mexico, 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 work comprising the position of the first trick telegrapher-clerk at Artesia, New Mexico, shall be restored to the Agreement.

3. Carrier shall now be required to compensate J. B. Weber for eight hours' pay at the rate of the first trick telegrapher-clerk position at Artesia 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 Artesia, plus actual necessary expenses incurred each day required to work at a station other than Artesia.

4. All other employees displaced as a result of the abolishment of the first trick telegrapher-clerk position at Artesia shall be compensated for eight hours pay at the rate of the position occupied by them when displaced, for each work day in addition to pay at the time and one-half rate for work performed outside the assigned hours of their formerly occupied position, plus actual expenses incurred on each day they work at a station other than where their assigned position is located.

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 Artesia, New Mexico, and the transfer of work formerly performed by the agent and telegrapher-clerk to a newly established clerical position.

for the reason that it contemplates, among other things, not only the payment of (1) duplicate penalties for the same alleged violation and (2) overtime rates for work not performed, but also disregards the repeated holding of the Third Division that the right to work is not the equivalent of work performed, and that in the absence of a rule requiring the payment of punitive damages, and no such rule is to be found in the current Telegraphers' Agreement, the proper measure of penalty compensation to be assessed for an agreement violation is the payment of the net loss in compensation sustained by the injured employee. Awards Nos. 6701, 7309, 8673, 8674 and others. In addition to not being supported by any rule of the Telegraphers' Agreement, your claim for expenses in behalf of Mr. Weber and the unidentified 'all other employes * * *' is identical in nature to those which have repeatedly been denied by the Third Division as being neither warranted nor supported by the agreement rules of the governing agreement.

Yours truly,

/s/ L. D. Comer"

"October 2, 1959
26-E-1059

Mr. L. D. Comer, Asst. Vice Pres.
The AT&SF Railway Company
Railway Exchange Bldg.
Chicago 4, Illinois

Dear Sir:

This refers to your letter of September 30, 1959, file 135-251-2, in which you declined our claim in behalf of various employes arising out of the alleged abolishment of the first trick telegrapher-clerk position at Artesia, New Mexico, and the transfer of work of this position to employes not covered by the Telegraphers' Agreement.

It is our position that the first trick telegrapher-clerk position which encompassed various items of clerical work in order to fill out the assignment could not be abolished under the guise of transferring the clerical work to a newly established clerical position.

This is to advise you that your decision is not satisfactory and that claim will be appropriately appealed.

Yours truly,

/s/ A. W. Barraclough
General Chairman

KAV:mf"

OPINION OF BOARD: Carrier unilaterally reclassified the Agent's position to Agent-Telegrapher, abolished the first trick-Telegrapher-Clerk position, established a new Utility Clerk position and transferred the clerical duties of the Agent and Telegrapher-Clerk, covered by the Telegraphers' Agreement, to the new Utility Clerk, 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 14710 — DOCKET TE-12228

(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