

Award No. 14753
Docket No. TE-11115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway, that:

1. Carrier violated Article 9—Guarantees, and other rules of the Telegraphers' Agreement, when on December 23, 1957, it declared abolished, effective after December 24, 1957, the operator assignment "GO" Norfolk, and the operator-clerk assignment "RN" Raleigh.

2. Carrier shall compensate all employees resultantly displaced by reason of such improper abolishments, for all monetary loss sustained, including loss of time moving from one assignment to another, and the difference in the rates of pay, if any, and shall be returned to their former regular assignment.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to December 18, 1957, the two positions covered by the Telegraphers' Agreement have existed at Norfolk, Virginia and Raleigh, North Carolina. These positions have been listed in and subject to the Telegraphers' Agreement since 1919. In the current printed Agreement, effective from August 1, 1937 (since amended as to rules and rates of pay), the two positions are listed in the wage scale of the Agreement as follows:

Station	Position	Pro-rata Hourly Rate	Overtime Hourly Rate
"GO" Norfolk	O	\$0.73	\$1.09½
"RN" Raleigh	O-C	0.73	1.09½

The classifications of operator and operator-clerk have since been maintained. The rates of pay have been adjusted upward from time to time. On December 18, 1957 the hourly rate for both positions was \$2.272.

Both are "five day" assignments, Monday through Friday, rest days Saturday and Sunday, with no holiday hours. Mr. H. D. Vernelson was the regularly assigned incumbent at Norfolk, hours 8:30 A. M. to 5:30 P. M. Mr. W. D.

under Bulletins number 4090 and 4091 respectively at a time when no vacancy existed on either position, and a full week in advance of their alleged abolishment, contrary to the provisions of Article 24-(a). The incumbents filed protest bids and were respectively assigned to the position previously owned. The positions were blanked 2 days—December 26th and 27th.

CARRIER'S STATEMENT OF FACTS: Due to the recessionary period through which the railroads were passing during the latter part of 1957 and the greater part of 1958, this carrier was impelled for economic reasons to effectuate reduction in expenses wherever possible, and accordingly abolished and/or furloughed positions in various crafts (according to the provisions of the agreement rules) for several days when it was determined the work of the positions could be deferred. As a result, determination was made that the positions of telegrapher "GO" (General Office) Norfolk, Virginia, and operator-clerk at "RN" relay office, Raleigh, North Carolina, could be dispensed with after close of business December 24, 1957, until Monday, December 30, 1957. This in effect abolished the positions for the working days of December 26th and 27th, (December 25th being a regular holiday, and the positions being five day positions the days of Saturday and Sunday, December 28th and 29th were rest days).

In accordance with Article 24(a) of the agreement reading in part as follows:

"(a) When permanent vacancies occur or additional positions are created they will be advertised to all employes on that seniority district within ten (10) days and accepted within ten (10) days thereafter."

the carrier by Bulletins 4090 and 4091 issued on December 18th (ten days prior to re-establishment of the positions) advertised the two vacancies stating that bids would be received through December 28th for the two positions in question. These bulletins were issued by the carrier so as to be in conformity with the agreement provisions. The two employes who were incumbent of these positions prior to the abolishment were likewise the successful bidders under the bulletins advertising the positions, and were assigned to such positions.

OPINION OF BOARD: The basic facts in this case are not in dispute. On December 18, 1957, Carrier announced in Bulletin Numbers 4090 and 4091, that it would, through December 28, 1957, receive bids for an Operator-Clerk position at General Office, Norfolk, Virginia, and for an Operator-Clerk at "RN" Office, Raleigh, North Carolina, both 8:30 A. M. to 5:30 P. M., Monday through Friday positions; at the time these bulletins were issued these positions were in existence and each occupied by one of the Claimants. On December 23, 1957, Carrier notified Vernelson, incumbent of the Norfolk position, and Yates, incumbent of the Raleigh position, that after completing work Tuesday, December 24, 1957, "Operator-Clerk assignments 'RN' Office at Raleigh, N. C., and 'GO' Office at Norfolk will be cancelled." On December 24th, Vernelson, and on December 28th, Yates, each "under protest", and pursuant to the Bulletins, applied for, and on December 30th, were assigned to the positions which they had occupied until December 24th.

The effect of this was that on two of what would otherwise have been regular workdays of the two positions, December 26th and 27th, no work was

performed on the two positions. Yates exercised his seniority to displace Carroll, an Operator-Leverman, at Boylan Tower, who, in turn displaced Harris on the relief position at Boylan Tower; Harris, in turn, displaced an extra employe on second trick at Glenwood Yard. Vernelson did not exercise his seniority and did not work on the two days. When Yates returned to the position of Operator Clerk at "RN" Raleigh, each of the employes displaced as a result of the sequence initiated by Yates' displacement of Carroll returned to his former assignment except Harris, who lost out on his former assignment and remained at Glenwood Yard on an assignment paying 4.6 cents per hour less than his Boylan assignment.

Employes argue that the abolishment of the two positions was not bona fide but was a suspension of work during regular hours in violation of Article 11 as well as of Article 9 of the Agreement between the parties.

Carrier argues that it determined that the two positions in question "could be dispensed with after the close of business December 24, 1957 until Monday, December 30, 1957." December 25th being a regular holiday and December 28th and 29th being regular rest days of the five day positions, Carrier claims that "This in effect abolished the positions for the working days of December 26th and 27th * * *", and that since the abolishment of the positions was bona fide, the Agreement was not violated.

Article 9 of the Agreement reads:

"All regularly-assigned employes who are ready for service and do not lay off of their own accord will receive not less than a minimum day's pay applying to the position to which assigned or entitled during each 24-hour period, except on assigned rest days and the holidays designated in Article 7, Paragraph (o). Guarantee shall not apply in case of reduction of force, or in case traffic is interrupted or suspended by conditions not within the control of the Company."

Article 11 reads:

"Employes will not be required to suspend work during regular hours or to absorb overtime."

If the abolishments were not bona-fide then Vernelson and Yates remained the regularly assigned incumbents of the positions between December 24th and December 30th, and the exception to the guarantee in Article 9 did not apply since there was no reduction of force. A bona fide abolishment of a position implies Carrier's determination, based on information at hand, that for the anticipatable future enough work of the position will not be required to warrant keeping the position occupied—whereas a suspension of work for a few days quite evidently does not involve an anticipation of such a degree of finality in the demise of the position, as is implied by abolishment, but, on the contrary, acknowledges that the work on the position will again be required in a few days. (See our Award No. 3655)

It is clear from Carrier's action in anticipating the restoration of the positions more than a week before cancelling the assignments for five days that Carrier's determination to abolish the positions was not based on a determination that there would continue to be a lack of need for the work of the positions for so extended a period as to warrant the finality of abolish-

ment. We find, therefore, that Carrier's abolishment of the positions was not bona fide, but was actually a requirement that Vernelson and Yates suspend work during their regular hours on December 26th and 27th. Therefore, Vernelson and Yates did not cease to be regular employees within the meaning of Article 9; their suspension for the two days was in violation of Article 11; and the cancellation of their assignments did not constitute a reduction of forces within the meaning of Article 9.

Vernelson and Yates and the various employees named above who were bumped off their assignments as result of Yates' move to Boylan Tower and back to his original assignment may have suffered losses in pay as a consequence of Carrier' violation of Article 9 and 11. Employees ask, in addition to a "make whole" order, that we require that the affected employees be returned to their former regular assignments; we do not believe it would be practical for us to make such an order; so in sustaining the claims, we will modify Claim numbered 2. accordingly, and require that the affected employees be made whole for any losses in pay sustained by each of them as a result of the improper abolishments from the date of the improper abolishments until the date each was or is returned to the position held by each prior to the improper abolishments.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

A W A R D

Claim sustained as modified in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1966.