

Award No. 14775
Docket No. TE-12989

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway that:

1. Carrier violated and continues to violate the Agreement between the parties when, effective August 9, 1960, it declared abolished the position of Agent-Telegrapher at Superior East End, Wisconsin and transferred the work of the position to employees not covered by the Agreement at another location.

2. Carrier shall restore this work to the Agreement and assign it to employees holding seniority under the Agreement in accordance with the applicable rules.

3. Carrier shall be required to compensate K. W. Johnson, regularly assigned occupant of the position of Agent-Telegrapher at Superior East End, in the amount of a day's pay (8 hours) on each work day of the position, Mondays through Fridays, commencing August 9, 1960, and continuing thereafter until the violation is corrected; and compensate the senior idle extra employee (to be determined by a joint check of the Carrier's records) in the amount of a day's pay (8 hours) on each day commencing August 9, 1960, and continuing thereafter on a day-to-day basis until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective March 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof. The Chicago and North Western Railway Company acquired the CStPM&O and made it a part of its system. However, the Agreement referred to still controls the territory which was formerly the CStPM&O.

Superior East End, Wisconsin, is a station on this Carrier's lines (TC Division of the C&NW).

For many years prior to August 9, 1960 there was a position of Agent-

is to be noted in that letter that the General Chairman contended that because of the carload business at Superior East End, the continued maintenance of an agent position at that point was required. Again in that letter the organization admits that following September 1959 the only work performed by the agent at Superior East End "* * * consisted of messenger work, distributing mail, interchange, and other reports, between the various yard and other installations in the Duluth-Superior area." The General Chairman further contended in that letter that "* * * approximately half million dollar revenue which was being jeopardized by way of withdrawing Agency service at Superior East End, the industries at this location being served also by another Carrier."

This claim was denied by the Carrier's Director of Personnel under date of February 7, 1961, a copy of the carrier's letter being attached as Carrier's Exhibit "H".

(Exhibits not Reproduced.)

OPINION OF BOARD: The Public Service Commission of Wisconsin entered the following Order on May 3, 1960;

"THE COMMISSION THEREFORE ORDERS:

1. That the Chicago and North Western Railway Company herein be and it hereby is authorized to withdraw agency service and remove the depot building at Superior East End in the city of Superior, Douglas County.
2. That the Chicago and North Western Railway Company herein be and it hereby is authorized to eliminate Superior East End as a station from all but carload freight tariffs.
3. That the order herein may be made effective upon proper publication of the tariff changes necessary on not less than 30 days' notice to the Commission and to the public."

Superior East End was a one-man station at which Claimant held the position of Agent-Telegrapher. On August 9, 1960, Carrier abolished the position and abandoned the agency. Remaining work was assigned to employees, not covered by Telegraphers' Agreement, at another location.

The theory of Petitioner's case, as stated in its Submission, is:

"In the instant case, the station work at Superior East End accrued in its entirety to the agent at that one-man station. The position of Agent-Telegrapher at Superior East End is squarely within the scope of the Telegraphers' Agreement. The work was transferred to employees not covered by that Agreement. This is a violation of the Agreement and injures employees holding seniority under the Agreement."

The facts stated in the first three sentences are not controverted. The last sentence frames the issue.

In its Submission Petitioner has adduced statements of facts which are not material to the issue as framed in the Claims:—Was the work being per-

formed by Claimant, at the time of abolishment of the position (August 9, 1960), wrongfully assigned to employees not covered by Telegraphers' Agreement? We must ignore them. See, Rules of Procedure of the Board, Circular No. 1.

It is established by prior Awards of this Board that a carrier has an absolute right to abolish a position unless restrained by law or agreement. We find no restraint in the Agreement; nor, have the parties cited any other legal restraint. We, therefore, find that Carrier had the right to abolish the position involved herein.

We repeat, the narrow issue is whether the work which had been performed by Claimant at the time of abolishment of his position was assigned to employees of another craft or class in violation of Telegraphers' Agreement. That work at that time is detailed by Petitioner:

"* * * his (Claimant's) duties then consisted of messenger work, distributing mail, interchange, and other reports, between the various yard and other installations in the Duluth-Superior area. This continued until August 9, 1960 when the position was abolished."

It is Carrier's position that: (1) the Scope Rule of the Agreement is general in nature; (2) to prevail Petitioner has the burden of proving that the work has been performed exclusively, historically and customarily, on Carrier's system by telegraphers; (3) Petitioner has not averred, much less proven, the requirement of (2); therefore, Carrier was free to assign the work to a craft or class other than telegraphers.

It appears to be the position of Petitioner that: (1) work at the one-man station, regardless of its nature, accrued to the agent and he had the exclusive right to perform the work; and (2) once the agent had the exclusive right to the work in the one-man station, regardless of its nature, that particular work was forevermore exclusively reserved to telegraphers.

We find that: (1) the Scope Rule is general in nature; and (2) Claimant had the right to perform the work so long as he held the position of agent in the one-man station. The question is whether finding (2) matures into a finding that the work, regardless of its nature, was exclusively reserved to telegraphers after the one-man station position of agent was abolished and the station abandoned. We think not.

We, in general scope rule cases, have generally held that upon abolishment of a position any remaining work of the position which has been exclusively performed by the particular craft or class, of which the position is a part, must be assigned to an employee in that craft or class; also, that remaining work of the abolished position not historically and customarily exclusively performed by employees of the craft or class of which the abolished position was a part may be assigned to employees in another craft or class—we are not here concerned as to what other craft or class. We see no reason of digress from those holdings because the position abolished is a one-man station agency position with attributes peculiar to such position during its existence. The right to work other than that exclusively reserved to telegraphers, system-wide, is indigenous to a one-man station agency position; absent the position the right does not exist.

Inasmuch as Petitioner, in effect, admits in its Submission that the work

involved is of a nature not exclusively performed by telegraphers on Carrier's system, we will, for the foregoing reasons, 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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1966.