

Award No. 14871
Docket No. TE-14167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier violated the Agreement between the parties when on December 13, 1961 it declared abolished the position of 1st shift at WB Tower located in Adrian, Michigan.

2. The Carrier shall compensate Mr. H. Sharp, the regular assigned employe on 1st shift WB Tower located in Adrian, Michigan before the unilateral abolishment of such position and Mr. D. Brindle who was displaced when Mr. Sharp exercised his displacement rights beginning on December 13, 1961 and continuing until the violation is corrected.

3. The Carrier shall compensate one idle employe, extra in preference, on seniority district No. 5 in the amount of a day's pay for each day beginning on December 13, 1961 and continuing until the violation is corrected.

4. The right is reserved to examine the records to determine the amount due each claimant.

EMPLOYEES' STATEMENT OF FACTS: By letter of April 12, 1961 the General Chairman agreed to the change in classification of the A-N Agent at Adrian, Michigan to an O Agent, effective April 1, 1961. See O.R.T. Exhibit 1.

By notice of September 6, 1961, the Carrier declared the first and second shift operator-leverman positions at WB Adrian abolished. With the

"When a vacancy occurs on any of the positions designated as 'J' or 'N' in the Wage Scale, it will be filled by appointment of a properly qualified Telegraphers' Agreement employee who has at least 5 years' seniority, who may be selected from any of the 10 Seniority Districts listed in Article 24(i)."

In April of 1961 it was agreed with the Organization to place the Agent position at Adrian under the full coverage of the Agreement and the position was designated as an "O" position under Article 3 of the Agreement. Attached at Carrier's Exhibits "A" and "B" are exchange of letters covering placement of the position under the Agreement.

Due to the limited amount of work performed at "WB" Tower the first trick Operator-Leverman position was discontinued, after proper notice, effective December 13, 1961. The only remaining work of the first trick Operator-Leverman position, which was that of handling train orders for one train per day and lining the interlocking plant for passage of the one NYC train over "WB" crossing, was performed by the Agent who is also a Telegraphers' Agreement employee on Seniority District No. 5.

On June 6, 1962 work of transforming "WB" into an automatic interlocker was completed and as a result the remaining second trick Operator-Leverman position was discontinued and the Agent was relieved of the requirement of handling the interlocker for movement of the one NYC train per day.

Effective December 13, 1961 the Organization filed claims alleging that the agreement was violated when the first trick Operator-Leverman position was abolished and the Agent was required to perform duties that were formerly performed by the incumbent of that position. These claims were denied by the Carrier and are now the subject of the instant dispute.

No claims were filed or progressed as a result of the closing of "WB" Tower effective June 6, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 13, 1961 Carrier maintained a train order office in Adrian, Michigan designated as "WB" Tower, at the crossing of the Wabash Railroad tracks over the New York Central Old Road Subdivision. Approximately ½ mile away Carrier maintained a freight station manned by an Agent. Also, immediately prior to December 13, 1961 the work required of the 1st trick Operator-Leverman on duty at "WB" Tower consisted of handling train orders for one train per day and lining the interlocking plant for the passage of one New York Central train over "WB" crossing. Due to this limited amount of work to be performed, the 1st trick Operator-Leverman position was discontinued on December 13, 1961. This work was then performed by the Agent at the Freight Office and required the Agent to travel from the Freight Office once daily to the "WB" Tower and return to the Freight Office. The Agent performed this duty until June 6, 1962 at which time an automatic interlocker was completed. The Organization makes Claim for Claimant Sharp--1st trick Operator-Leverman, whose position was abolished; for Claimant Brindle, who was displaced when Sharp exercised his displacement right; and one idle employee, extra in preference, on this Seniority District.

Argument on behalf of Claimants urges that Award 388 (Sharfman — 1937) be followed in resolving the issue in the matter herein. This Board finds that Award 388 was followed in numerous awards up to and including Award 8374 (Lynch — 1958). These awards generally held that because of a lack of provision in the Agreement permitting a "joint agency", Carrier could not, by ex parte action abolish a position and require an employee working at another location to assume the duties of the abolished position in addition to his regularly assigned duties at his original location. In other words, these awards simply stated that Carrier could not act unless such action was specifically allowed in the Agreement. However, in 1963 this Board, in Award 11294 (Moore), repudiated Award 388 in holding that the Carrier has the right to create a "joint agency" unless prohibited by the Agreement. This Board has consistently followed Award 11294 from its adoption to the present time. See Awards 11511 (Stark), 11660 (Dolnick), 12377, 12378 (O'Gallagher), 12486 (Ives), 12945, 12946, 12948 (Wolf), 14670 (Devine) and 14742 (Ives). Thus, Award 11294 has been firmly established as precedent.

It is well settled that Carrier has the inherent right to abolish positions in the interests of efficiency and economy subject only to limitations contained in the agreement (Award 12377 — O'Gallagher).

Therefore, we must hold that in the absence of a showing by Claimants that some rule of the Agreement was violated, this claim is denied.

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 21st day of October 1966.