



Award No. 14912

Docket No. TE-12525

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

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

CLAIM NO. 1

1. The Carrier violates the terms of an Agreement between the parties hereto when effective August 1, 1959, it purported to abolish the Agent-Operator's position at Great Bend, Pennsylvania, without in fact abolishing the work thereof, and thereafter required or permitted employees not covered by the Telegraphers' Agreement at Great Bend and/or Susquehanna, Pennsylvania, and Binghamton, New York, to perform the work of the nominally abolished position.

2. The Carrier shall, because of the violation set out in Item 1 of this Statement of Claim, commencing August 1, 1959, compensate M. R. Walker, former occupant of the Agent-Operator's position at Great Bend, Pennsylvania, the equivalent of a day's pay at the rate of the Agent-Operator's position at Great Bend, in addition to any other compensation paid him by the Carrier, and for each work day thereafter so long as the violation continues.

3. The Carrier shall, as an alternative to the foregoing, commencing August 1, 1959, pay a senior idle telegrapher, extra in preference, a day's pay at the rate of the Agent-Operator's position at Great Bend, Pennsylvania, for each work day on which the primary claimant, M. R. Walker, is disqualified, for any reason, from receiving said pay, and for each work day thereafter so long as the violation continues. The name of the senior idle employee, extra in preference, to be furnished by the Carrier.

CLAIM NO. 2

1. The Carrier violates the terms of an Agreement between the parties hereto when, effective September 16, 1959, it purported to abolish the Agent-Operator's position at Canisteo, New York, with-

out in fact abolishing the work thereof, and thereafter required or permitted employes not covered by the Telegraphers' Agreement at Hornell, New York, to perform the work of the nominally abolished position.

2. The Carrier shall, because of the violation set out in Item 1 of this Statement of Claim, commencing September 16, 1959, compensate a senior idle telegrapher, extra in preference, a day's pay at the rate of the Agent-Operator's position at Canisteo, New York, and for each work day thereafter so long as the violation continues. The name of the senior idle employe, extra in preference, to be furnished by the Carrier.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective March 1, 1957, and as otherwise amended.

At page 43 of said Agreement appears, among other listings, the positions existing at Great Bend, Pennsylvania and at Canisteo, New York, on the effective date of said Agreement. The listings read:

Location	Office	Position	No. of Positions	Rate
Great Bend	K	AO	1	\$2.146
Canisteo	NI	AO	1	2.146

Position listings similar to the above appear at pages 23 and 24 of the parties' Agreement, effective August 1, 1923; at pages 19 and 20 of an Agreement effective December 15, 1926; and, at page 22 of an Agreement effective May 1, 1929.

CLAIM NO. 1

Great Bend station is located in Susquehanna County, 8.2 miles by rail from the Carrier's agency station at Susquehanna, and 14.3 miles, also by rail, southeast of Carrier's agency station at Binghamton, New York.

M. R. Walker, hereinafter referred to as claimant, was, prior to August 1, 1959, the regular occupant of the agent-operator's position at Great Bend. As such, his assigned hours were 8:00 A.M. to 5:00 P.M., one hour meal period. Work week Monday through Friday, Saturday and Sunday rest days.

Within the switching limits of Great Bend, served by the claimant in his capacity as agent for Erie at this station, are the following named firms: C. M. Rickard Lumber Company, Great Bend Manufacturing Company, and Great Bend Foundry and Tool Machinery Company.

In addition to the foregoing, Keystone Mills, with an annual average revenue of approximately thirty thousand dollars on carload feed traffic, is handled by the agent at Great Bend. However, this revenue is not credited to Great Bend station. Also, Great Bend handles the non-agency station at Kirkwood, New York, at which the Wilmarth and Gulino Lumber Company is located.

In addition to the foregoing, individual shippers and receivers of freight at Great Bend and/or Kirkwood swell the list of Carrier's patrons at this station.

In recent Third Division Award 9250, the Board had the following to say:

"The employees involved in the claim here submitted are neither named nor identified. Section 1(a) of Article V of August 21, 1954, relied on by petitioner, also requires that all claims or grievances must be presented by or in behalf of the employee involved. Where there is no identifiable claimant in whose behalf the claim is made, there is no proper claim before us upon which to act, and the tendered claim should be dismissed."

In very recent Third Division Award 9848, it was the opinion of the Board that:

"The present claim does not comply adequately with Rule 33(a) of the Parties' Agreement, which Rule was taken literally from Article V, Section 1 (a) of the National Agreement of August 21, 1954. Decisions construing the requirement under the latter provision that claims be presented 'by or on behalf of the employee involved', were summarized by this Board in Award 9248 as follows: 'Some decisions hold that the claimants must be specifically named, while others hold that the claimants need not be specifically named so long as they are easily and clearly identifiable.' Also see Awards 8526 and 9250.

The present claim is made for 'Each Bridge and Building Department employee'; thus, the claimants are not specifically named; nor are they easily and clearly identifiable in this case. The claim must be dismissed."

OPINION OF BOARD:

CLAIM NO. 1

As a result of decrease in work, Carrier petitioned and was granted authority from the Public Utility Commission of Pennsylvania, on August 1, 1959, to change the status of its station at Great Bend, Pennsylvania from that of an agency freight station to that of a non-agency carload freight only station. Thereafter, Carrier abolished the position and work of the Agent-Operator at Great Bend.

CLAIM NO. 2

As a result of decrease in work, Carrier petitioned and was granted authority from the Public Service Commission of New York on September 16, 1959, to change the status of its station at Canisteo, New York, from that of an agency freight station to a non-agency carload freight only station. Thereafter, the Carrier abolished the position and work of the Agent-Operator at Canisteo.

The Organization basically contends, that when the Carrier abolished the position of Agent-Operator at Great Bend and Canisteo, work remained to be performed at those stations, which work was transferred to employees at Susquehanna and Hornell, respectively, who were not covered by the Agreement. It asserts that Carrier's action was violative of the Agreement. It sets forth in its submission that Rules 1, 3, 5, 17, 25, and 37 were specifically violated.

The Carrier's position is that the claims are indefinite and vague under Article V, 1(a) of the 1954 National Agreement, inasmuch as they are presented by "unnamed claimants."

The Carrier contends that the Organization has the burden of proving that the abolished work was performed by employees not covered by the agreement as alleged by Organization to be in violation of the Scope Rule.

It is the position of the Carrier that the claim must be denied because the Organization has not established that the exclusive right to the work exists in claimant.

Prior awards of this Board have held that the Carrier has the right to abolish positions unless restricted by the Agreement. No provision in the Agreement prevents the exercise of this right, and we find the Carrier's action in abolishing the positions of Agent-Operator was proper.

In relation to the contention that the Scope Rule was violated, we find that the Agent-Operator had the right to perform the work so long as work existed at the station and so long as he held the position. His right to perform the work ceased when the work and the position were abolished. This conclusion is supported by prior awards of this Board. Award 14775 (Dorsey).

The contention that work which remained at the abolished stations was transferred to employees, at other stations, not covered by the Agreement, cannot be sustained. This conclusion is based upon the fact that the Organization failed to submit sufficient evidentiary proof to establish the validity of the assertion that such work was in fact transferred.

It must be recognized that the burden of proof in such matters rests upon the party making the claim. Numerous prior awards of this Board have held that the burden of proof must be met by the Claimant or Petitioner who asserts a violation of the Scope Rule or the exclusive right to the work involved.

The Board, therefore, finds that the Organization has not proffered sufficient evidence to meet the burden of proving a violation of the Scope Rule, nor has it met the burden of proof to establish the exclusive right to the work involved.

In light of the finding made herein, there is no need to discuss the Carrier's contention that the claims are indefinite and vague and are presented by "unnamed claimants."

The Board concludes that the claims must be dismissed for the reasons set forth herein and for the further reason that the Organization has not met its burden of proof.

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 Employes involved in this dispute are respectively Carrier and Employes 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.