

Award No. 14937
Docket No. TE-13978

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Susquehanna and Western Railroad, that:

1. The Carrier violated the terms of an agreement between the parties hereto when, effective August 18, 1961, it purported to abolish the Agent-Operator's position at Hainsburg Junction, without in fact abolishing the work thereof, part of which it unilaterally assigned to Agent-Operator position at Sparta-Sparta Junction, and part of which it transferred to employees who hold no rights under the parties' Agreement.

2. The Carrier shall, because of the violation, restore the position at Hainsburg Junction and assign thereto all work which was unilaterally transferred.

3. The Carrier shall, commencing sixty (60) days prior to the date upon which this claim is filed, in accordance with Paragraph 2, Rule 36, compensate E. G. Dunn, the former occupant of Agent-Operator position at Hainsburg Junction, for a day's pay at the rate of position, and for any additional expenses that he may have incurred for each day that he was deprived of working said position, in addition to any other wages he may have been paid by Carrier.

4. In addition, Carrier shall compensate any other Telegrapher who may be affected by such violative act, for any wages lost and for any expenses incurred.

5. Carrier shall permit a joint check of records to determine dates and amount due employees affected.

EMPLOYEES' STATEMENT OF FACTS: The Wage Scale of the parties' Agreement, dated June 18, 1957, shows the following partial listing of positions:

"Location	Office	Position	No. of Employees	Rate
Sparta-Sparta Jct. (3)	SA	AO	1	\$2.194
Hainsburg Jct.	H	AO	1	2.17
		OC	1	2.086

1956	9,318	1,376
1957	8,136	913
1958	8,046	805
1959	7,024	780
1960	4,998	686
1961	874	145

(Jan. thru Oct.)

NOTE: Interchange ceased October 31, 1961, account abandonment of the Lehigh and New England Railroad under ICC Docket No. 21155-L&NE RR.

The drastic decrease in interchange work at this point is evident from the above tabulation.

During August, 1961, Susquehanna delivered to L&NE RR 14 loads and 51 empties, a total of 65 cars, and they delivered to Susquehanna only 34 loads.

In September, our deliveries to the L&NE RR were 5 loads and 35 empties, and they delivered to us 46 loads and 1 empty, a total of 87 cars.

October deliveries from Susquehanna to L&NE amounted to 14 loads and 60 empties and received from L&NE 74 loaded cars.

The decline in interchange and interchange work is obvious.

Agency work at Hainsburg Junction has always been negligible. Not a single car either originated or was received at Hainsburg Junction Station during the months of August, September and October, 1961. Prior to that only an occasional car was received on our line in the territory covered by the Agent at Hainsburg Junction.

Considering the above circumstances, Hainsburg was made a prepaid station, and the position of Agent was abolished on August 18, 1961.

After the abolishment of the Agency and until the abandonment of the L&NE, once or twice a week it became necessary for a man to be at Hainsburg Junction to handle train orders to permit of train movements over the trackage section and to perform interchange work, and this work was assigned to the Agent at Sparta Junction, who was fully compensated for same both for hours worked and by the allowance of automobile mileage. (See Exhibit A attached, Carrier's submission in ORT Case 3784 — companion case advanced on behalf of Agent-Operator Sparta-Sparta Junction.)

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to August 18, 1961, there existed at Hainsburg Junction, New Jersey, a position of Agent-Operator which was occupied by Claimant, E. G. Dunn. There also was a position of Agent-Operator at "Sparta-Sparta Junction." The work of this position was established in a Memorandum of Agreement dated January 23, 1950, which provided that the occupant of the position "perform the Agent's work at the following stations: Sparta, Sparta Junction, Hyper Humus, Stillwater, and Blairstown."

This Memorandum of Agreement was continued in full force and effect in Rule 44 by an express statement to that effect.

On August 18, 1961, the Carrier abolished the position at Hainsburg Junction pursuant to permission granted by the New Jersey Public Utility Commission. The small amount of work remaining incident to the interchange of cars with the Lehigh and New England Railroad at that point was assigned to the agent at Sparta-Sparta Junction until October 31, 1961, when the L&NE operation at Hainsburg Junction was abandoned.

The Organization filed two claims, one involving the consequences which flowed from the abolishing of the position at Hainsburg Junction (Award 14937), and the other involving the allegedly improper assignment of the remaining work to the agent at Sparta-Sparta Junction. (Award 14938)

The right of the Carrier to abolish a position when the work of that position has substantially declined has been frequently sustained by this Board. See Awards 11660, 11793, 12377. And, the right to reassign the remaining work has also frequently been sustained. What is novel in this case is the Memorandum Agreement, negotiated by the parties, establishing the number and location of agencies to be filled by the occupant of the position of Agent-Operator at Sparta-Sparta Junction. The specific listing of five locations is evidence of agreement that no other locations may be added. It is a rule of contract construction that a specific list which is an exception to a general rule excludes all other items not listed.

We must hold that Carrier violated the Memorandum of Agreement in adding Hainsburg to the list.

It does not appear, however, that the Organization sustained its obligation to prove damages. Although the record does not state what happened to Claimant Dunn, there is no evidence that he lost any pay. In the absence of proof of damages, the Federal Court has stated that this Board "has no specific power to employ sanctions, and such power cannot be inferred as a corollary to the Railway Labor Act." *Brotherhood of Railroad Trainmen v. Denver & Rio Grande Western R. Co.*, 338 F.2d 407, cert. den. 85 S. Ct. 1330 (1965).

There is likewise no proof that any of the other Claimants suffered any loss of pay. Claimant J. C. Cooke, the occupant of the position at Sparta-Sparta Junction, performed the extra duties at Hainsburg Junction within his normal hours and was reimbursed for the extra travel expense involved. There is no evidence that the change in his duties was substantial enough to warrant an increase in rate of pay under Rule 3 (c). Award 13925.

The Board does not have authority to restore the abolished position. Awards 13840 and 13778. Nor is there any rule requiring the Carrier to search its records to develop a claim. Awards 12739 and others.

It follows, therefore, that only Claim No. 1 can be sustained and all the other claims must be 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 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 violated.

AWARD

Claim sustained only to the extent indicated 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 November 1966.