

Award No. 14939
Docket No. TE-14001

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. Carrier violated the terms of an agreement between the parties hereto because, effective August 1, 1961, it purported to abolish the Agent-Operator's position at Newfoundland, New Jersey without in fact abolishing the work thereof, which it unilaterally assigned to the position of 2nd trick operator-clerk, Butlers, New Jersey.

2. Carrier shall restore the position at Newfoundland, and assign thereto all work which was unilaterally transferred to position at Butler.

3. The Carrier shall, commencing sixty (60) days prior to the date upon which this claim is filed, in accordance with paragraph 2, Rule 38, compensate the senior idle employees (extra in preference), for a day's pay at the rate of position at Newfoundland for each day that the violation exists.

4. 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.

EMPLOYES' STATEMENT OF FACTS: The facts of this case are briefly stated in Part 1 of the Statement of Claim. In supplement thereto, the following information is given. Newfoundland is ten miles in distance from Butler. The Wage Scale of the parties' Agreement, dated June 18, 1957, shows the following partial listing of positions:

"Location	Office	Position	No. of Positions	Rate 11-1-56
Butler	BA	AO	1	\$2.134
		OC	1	2.086
Newfoundland (3)	NW	AO	1	2.05

NOTES

- (3) Memorandum Agreements, Rule 44. Employee performs service at more than one station.

KEY

A — Agent

C — Clerk

O — Telegraph Operator and/or
Telephone Operator"

Effective August 1, 1961, Carrier abolished the Agent-Operator position at Newfoundland, but did not abolish the work of said position. It, instead, unilaterally assigned the work to the occupant of the second shift Operator-Clerk position at Butler, and required him to travel to Newfoundland each day to perform such work.

Claim was filed by the General Chairman, copy of which is attached hereto as ORT Exhibit No. 1. Subsequent communications exchanged between the parties in the case handling on the property are also attached hereto and marked ORT Exhibit Nos. 2 through 9.

Said correspondence will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board, but failed of settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect on the property an agreement effective June 18, 1957 between the Carrier and The Order of Railroad Telegraphers covering working conditions and compensation of employees represented by that organization, which agreement is, by reference, made a part of this submission.

Newfoundland for years past has been a small one-man agency. There was no passenger service at the station; a very small amount of freight service or business and some interchange and passing report work. On or about August 1, 1961, it was made a prepaid station.

Prior to August 1st, the position at that point was held by an employee of retirement age, and, out of consideration for his past service, no action toward a change in the status of this Agency was initiated by the Carrier until the incumbent indicated his election to avail himself of retirement.

Carrier submits as Exhibit A, attached hereto, a copy of its letter of May 25, 1962 to General Chairman Matthews, outlining in some detail the history of this case, the duties and time involved in performing same.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim in this case is similar to that discussed in Awards 14937 and 14938, but it is sufficiently different to warrant separate examination.

Carrier abolished the position of Agent-Operator at Newfoundland, New Jersey, under permission granted by the New Jersey Board of Public Utility Commissioners, and assigned the small amount of work remaining to the second trick operator-clerk at Butler, who was required to go to Newfoundland to perform the work.

Unlike the situation in the previously mentioned awards, the position at Butler did not appear in the schedule agreement as including work at more than one station. It did appear in the record, however, that on June 7, 1960, Carrier proposed the consolidation of the position of Agent-Operator at Newfoundland and Operator-Clerk at Butler. After some negotiation, the General Chairman, on December 3, 1960, wrote, "we cannot agree to any further combinations of agencies at this time." Nevertheless, on July 26, 1961, Carrier unilaterally put into effect substantially the same rejected combination.

Rule 44 of the agreement lists agreements for the combination of agencies continued in force and effect.

Where the parties show by their agreement and their actions that negotiation and agreement are necessary to effect a combination of two agencies, it is a violation of their agreement to do so unilaterally. Claim No. 1 should, therefore, be sustained.

The remaining claims must, however, be denied because the Organization failed to prove damages and because the Board does not have power to restore an abolished position. See the companion awards mentioned above.

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 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.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.