

Award No. 15327
Docket No. TE-11761

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim is hereby presented by the General Committee of The Order of Railroad Telegraphers on the Chicago & North Western Railway, that:

CLAIM NO. 1

1. The Carrier violated the currently effective agreement when on November 17, 1958, it purportedly abolished the position of Telegrapher-Clerk at Wisconsin Rapids, Wisconsin, while the work of the position remained and continues to be performed by persons not entitled under the terms of the currently effective agreement to perform such work.

2. The Carrier shall, because of the violation set out above, pursuant to Article V, paragraphs 1, 3 and 4 of the August 21, 1954 Agreement, pay to the senior idle extra telegrapher subject to the agreement in the seniority district on each day involved, who has not or will not be otherwise compensated for such day, a day's pay at the straight time rate of the telegrapher-clerk's position at Wisconsin Rapids, Wisconsin, for November 17, 1958, and for each Monday through Friday thereafter until the agreement violation hereinabove stated is corrected. And, in the event on any such day there is no such extra telegrapher, claim is made alternatively on behalf of the senior regular telegrapher subject to the agreement in the seniority district whose rest day fell on such day and who has not or will not otherwise be compensated for such day, a day's pay at one and one-half times the straight time rate of the telegrapher-clerk's position at Wisconsin Rapids, Wisconsin. The right is reserved to examine Carrier's records to identify the employee on whose behalf this claim is made with respect to each day.

CLAIM NO. 2

1. The Carrier violated the currently effective agreement when on November 17, 1958, it purportedly abolished the position of telegra-

pher clerk at Wisconsin Rapids, Wisconsin, while the work of the position remained and continues to be performed by persons not entitled under the terms of the currently effective agreement to perform such work.

2. The Carrier shall, because of the violation set out above, pursuant to Article V, paragraphs 1, 3 and 4 of the August 21, 1954 Agreement, pay William Schunk, former occupant of the nominally abolished position, a day's pay at the straight time rate of the telegrapher-clerk's position at Wisconsin Rapids, Wisconsin, for each day Monday through Friday in the period beginning November 17, 1958, and for each Monday through Friday for which day said employee was not compensated by the Carrier, until the agreement violation herein above stated is corrected.

3. The Carrier shall, in addition to the foregoing, re-establish the purportedly abolished telegrapher-clerk's position at Wisconsin Rapids, Wisconsin, and its former occupant William Schunk thereto.

CLAIM NO. 3

1. The Carrier violated the currently effective agreement when on November 17, 1958, it unilaterally assigned telegraph service regularly to Joseph A. Delain, regular occupant of the Star Agency position at Wisconsin Rapids, Wisconsin.

2. The Carrier shall, because of the violation set out above, pursuant to Article V, paragraphs 1, 3 and 4 of the August 21, 1954 Agreement, pay claimant Joseph A. Delain, an additional day's pay at the straight time rate of the telegrapher-clerk's position at Wisconsin Rapids, Wisconsin, for each day Monday through Friday, beginning November 17, 1958, and for each day Monday through Friday thereafter until the violation herein above set forth is corrected.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective April 1, 1950, and as amended. At page 1 of this Agreement, under the caption Scope and the explanatory language:

"1. The term 'telegrapher' as herein used shall include:

(a) Agents and Assistant Agents at following locations referred to hereinafter as 'Star' agencies:

* * * * *

Wisconsin Rapids."

On January 8, 1954, Director of Personnel T. M. Van addresses the following letter to General Chairman R. B. Boyington:

"We are in receipt of proposal to reclassify the monthly-rated agent (Star Agent) at Wisconsin Rapids to that of agent-telegrapher which will result in the abolishment of telegrapher-clerk position

At no time during the handling of this case on the property has any contention been made that any work belonging exclusively to telegraphers, or any of the duties performed by the telegrapher-clerk while assigned at Wisconsin Rapids has, subsequent to March 29, 1957, been performed by other than telegraphers. As a matter of fact, there was no such transfer of work, and with the abolishment of the telegrapher-clerk position at Wisconsin Rapids in March 1957 and the reclassification of the agent position to agent-telegrapher, all work formerly performed by the telegrapher-clerk was transferred to the agent-telegrapher.

Claim here before this Board has been denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective on March 29, 1957, Carrier abolished the position of Telegrapher-Clerk at Wisconsin Rapids, reclassified the position there of Supervisory Agent to Agent-Telegrapher and assigned telegraph service there to the incumbent of the Star Agency position, Claimant Delain, without agreement between Carrier and the General Chairman. Organization filed a claim based on the alleging improper abolishment of the position and improper assignment of work of the position to Delain. That claim was progressed on the property until August 19, 1957, under which date Carrier's Director of Personnel Van Patten denied the claim in a letter to the General Chairman. Organization did nothing to move that claim further until, under date of January 15, 1959, Organization refiled the same claim, in the form of three separate letters, changing the substance of the allegations only by changing the date alleged for the abolishment of the position and for the starting date of its back-pay claim for Delain from March 29, 1957, the date in the original claim, to November 17, 1958 in the claims here involved.

Carrier argues that the here involved claims are barred by the Time Limit Rule (Article V) of the August 21, 1954 Agreement. There is no question that Claim Numbers 1 and 2, not being continuing claims, and being based on an event which, contrary to the date asserted in them, took place on March 29, 1957, more than 60 days prior to the refiling, are barred by the Time Limit Rule, both as belated filings and as attempts to revive matters closed by failure of the Organization timely to move them forward under the Rule.

Organization argues that Claim Number 3 is a continuing claim and can be presented at any time as long as the initial date for the back-pay portion is no more than 60 days prior to the date of filing. Carrier argues that only the initial filing of a continuing claim, which Claim Number 3 is, may be at any time, but that it is entitled to but one processing; that once it is barred for failure of the Organization to progress it in timely fashion under the Time Limit Rule, it cannot be revived by refiling as attempted here by the Organization.

It is our opinion that the original "continuing claim," which in this case for Delain reads: ". . . starting March 29, 1957, for each day the position was assigned . . . continuing to such time as the Telegrapher-Clerk position is reinstated at Wisconsin Rapids . . .", included the events and the time specified in the current (refiled) claim, which reads: ". . . for each day Monday through Friday, beginning November 17, 1958, and for each day Monday through Friday thereafter until the violation herein above set forth is corrected." Thus what is refiled here is a portion of the original claim which is

barred under the Time Limit Rule; if the whole of the original claim is barred, a part of it is likewise barred. Involved here is a claim which is of the same substance and chain of continuing events, as was the claim barred by extended inaction of the Organization and the same claim, once properly barred under paragraph 2 of Article V, cannot be revived under paragraph 3 of Article V simply by cutting off the portion preceding the 60 day limit on retroactivity set forth in paragraph 3.

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 Claims are barred from consideration on their merits under the Time Limit Rule.

AWARD

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.