



Award No. 15513
Docket No. TE-14388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated its Agreement with the employees represented by The Order of Railroad Telegraphers when, effective at 4:30 A. M., May 16, 1962, it declared abolished the position of third telegrapher at Pensacola, Florida without in fact abolishing the work of the position but assigned a substantial portion of the work of that position to the remaining telegrapher to be performed regularly on an overtime basis.

2. The position of third telegrapher, Pensacola, Florida shall be re-established and the former occupant thereof, Mr. F. E. Holman, shall be returned thereto.

3. Mr. F. E. Holman and all other employees who were displaced as a result of this improper action on the part of the Carrier shall be reimbursed for all wage losses sustained, plus expenses incurred as a result thereof.

EMPLOYEES' STATEMENT OF FACTS: The basic facts in this dispute are fairly related in the following correspondence exchanged by the parties on the property:

"Springfield, Mo.
July 9, 1962
C-31-5

Mr. J. F. Christian
Superintendent Southern Division
St. Louis-San Francisco Railway Company
Amory, Mississippi

Dear Mr. Christian:

Claim is presented as follows:

STATEMENT OF CLAIM:

1. Carrier violated its Agreement with the employees represented by The Order of Railroad Telegraphers when, effec-

"St. Louis 1, Missouri
December 3, 1962
D-8757

Mr. J. H. Abbott
General Chairman, ORT
Box 1366 S. S. Station
Springfield, Missouri

Dear Mr. Abbott:

This will confirm conference held in this office November 26, 1962 and our discussion of the claim in favor of F. E. Holman arising out of the abolishment of third telegrapher position at Pensacola, Florida, on or about May 16, 1962.

There was no evidence presented in conference to justify a change in the decision rendered September 7, 1962 with respect to the above mentioned claim and that decision is hereby reaffirmed.

Yours very truly,

/s/ T. P. Deaton"

CARRIER'S STATEMENT OF FACTS: Prior to the claim date the Carrier's telegraph office force at Pensacola, Florida consisted of Telegrapher position No. 14, occupied by J. M. Berrier, with assigned hours of 8:00 A. M. to 4:00 P. M., Monday through Friday; and Telegrapher position No. 15 occupied by F. E. Holman, with assigned hours 8:30 P. M. to 4:30 A. M. Monday through Friday with assigned call 9:15 P. M. to 11:15 P. M. on Saturday and 9:15 P. M. to 12:05 A. M. on Sunday.

Telegrapher position No. 15 was discontinued effective May 16, 1962 and the occupant, Claimant Holman, exercised seniority displacement rights on Telegrapher position No. 14 at Pensacola displacing Telegrapher Berrier. Claimant Holman remained on Telegrapher position No. 14 until September 1, 1962 when he submitted his resignation to the Carrier. Telegrapher Berrier returned to position No. 14 on September 1, 1962.

OPINION OF BOARD: This case involves the abolition of a position and the assignment of an alleged "substantial" portion of the work to a remaining employee to be performed on an overtime basis.

Carrier denied the claim (R-10 and 11) on the property asserting (1) No rule was cited by the Organization which would restrict the Carrier from assigning overtime, (2) There was no "showing" that a substantial part of the work of the abolished position was assigned to the remaining telegrapher; and (3) The work in question was not being handled in violation of the Scope Rule.

We can agree with Carrier's statement above referred to, except item (2) thereof, which is the real issue in our analysis of the claim.

In Award 14906 (Dolnick), we cited Awards 896 and 5235 and concluded that where the Carrier abolishes a position and assigns a substantial portion of the work of the abolished position to a surviving position, to be performed

on an overtime basis, the Carrier has violated its Agreement with the Organization. The foundation for this reasoning is expressed in the Agreement between the parties in the instant case in Article II and Article II-A. The clear intent and contemplation of the parties is to establish the forty-hour work week as a reasonable working condition. Overtime was recognized as an essential method of administering the business of the Carrier. However, the overtime provisions of the Agreement do not support the combining of positions where such combination substantially encroaches upon the employees' contractual rights pertaining to the forty-hour work week.

What is a "substantial" portion of the work of the abolished position? The answer to that question must be based upon the effect produced by the act complained of. If the effect of the Carrier's act in this case defeats the purpose of the provisions of the contract pertaining to the forty-hour work week, then the portion of the work assigned, is "substantial."

The Claimant, Holman, was required to work the following schedule as a result of the Carrier's act:

8:00 A. M. to 5:00 P. M.	9 hours	Monday to Friday
9:30 P. M. to 11:30 P. M.	2 hours	Monday to Friday
9:30 P. M. to 11:30 P. M.	2 hours	Saturday
9:30 P. M. to 12:30 A. M.	3 hours	Sunday

After deducting one hour for a meal period for five days, we find the employe working a total of fifty-five hours per week. The schedule does not permit the employe eight consecutive hours of sleep and comparatively little time for leisure.

We conclude that the effect of the Carrier's act encroaches upon the employe's contractual rights relative to the forty-hour work week and, therefore, the portion of the work of the abolished position, which was assigned to said employe, was "substantial" within the meaning of that term as applied in our previous decisions above cited.

We have no authority to restore the abolished position.

There is no showing that the Claimants have incurred any expenses.

"All other employes who were displaced as a result of this improper action" were indisputably identified on the property.

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 Carrier violated the Agreement.

AWARD

Item 1 is sustained.

Item 2 is denied.

Item 3 is sustained as to wage losses sustained by the Claimants and denied as to expenses incurred.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.