



Award No. 15521
Docket No. TE-14420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

ALABAMA, TENNESSEE AND NORTHERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Alabama, Tennessee and Northern Railroad, that:

1. Carrier violated its Agreement with employees represented by The Order of Railroad Telegraphers when, effective June 30, 1962 it declared abolished the position of clerk-operator Position No. 2, York, Alabama, without in fact abolishing the work of that position.
2. The position of clerk-operator Position No. 2, York, Alabama, shall be reestablished and the former occupant thereof, Mr. S. C. Acker, shall be returned thereto.
3. Mr. S. C. Acker shall be made whole for all wage losses sustained and expenses incurred as a result of this improper action on the part of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. S. C. Acker, was the regularly assigned clerk-operator at York, Alabama immediately prior to July 1, 1962. This position, as classified (clerk-operator), was covered by the Telegraphers' Agreement, as is the agent-operator's position. The following assignments prevailed prior to the foregoing date:

J. Oates (Agent-Operator)	6 AM-2 PM	5 days per week
S. C. Acker (Clerk-Operator)	10 PM-6 AM	5 days per week
G. J. Long (Agent-Operator)	6 AM-2 PM	2 days per week
(Clerk-Operator)	10 PM-6 AM	2 days per week

Effective July 1, 1962, the Carrier abolished the clerk-operator's position, also the relief agent-clerk-operator's position, and reassigned the agent-operator as follows:

J. Oates (Agent-Operator)	9 PM- 6 AM	Monday through Friday
	9 AM-11 AM	Monday through Friday
	11 PM- 2 AM	Saturday and Sunday

Effective July 1, 1962, Positions 2 and 3 were discontinued and the assigned hours of Agent-Telegrapher position No. 1 were changed to 9:00 P.M. to 6:00 A.M. with one hour for meals Monday through Friday, holidays included, with assigned call 9:00 A.M. to 11:00 A.M., Monday through Friday, excluding holidays.

OPINION OF BOARD: Prior to July 1, 1962, the Carrier's work force covered by the Telegraphers' Agreement at York, Alabama, consisted of the following:

	Position	Hours	
No. 1	Agent-Operator	6 AM - 2 PM	(5 days)
No. 2	Clerk-Operator	10 PM - 6 AM	(5 days)
No. 3	Relief Agent-Clerk-Operator	6 AM - 2 PM	(2 days)
		10 PM - 6 AM	(2 days)

Effective July 1, 1962, Carrier abolished Positions No. 2 and No. 3 and reassigned the No. 1 Agent-Operator as follows:

9 PM - 6 AM (Monday through Friday)
9 AM - 11 AM (Monday through Friday)
11 PM - 2 AM (Saturday and Sunday)

During the period July 1, 1962 until February 22, 1963, the Agent-Operator worked a total of 636 hours of overtime, or more than 80 hours of overtime a month. In and after November, 1963, the Saturday-Sunday work was performed by an extra employee.

Employees do not question the right of Carrier to abolish a position, provided the work of the position no longer remains to be performed. Employees do question such a right if the work of a position remains, and Employees maintain that the work of Position No. 2 still remains to be performed.

In Award No. 5235 (Boyd), the Third Division of the Adjustment Board decided a similar dispute. It was there held that the Carrier may not abolish a position and assign a substantial portion of the work of the abolished position to another employee to be regularly performed during overtime hours. The agreement between the parties to that dispute was almost identical, in pertinent part, to the Telegraphers' Agreement to be interpreted in the case now before the Board.

This Board sees no reason to depart from its holding in Award No. 5235. The sole question becomes one of fact: Did a substantial portion of the work of Position No. 2 remain to be performed? The Board finds that a substantial portion did remain, in view of the fact that the employee filling the surviving Position No. 1 was required to work 16 hours of overtime a week under a 7-day-a-week schedule clearly constructed to embrace the crucial hours of the three positions existing prior to July 1, 1962, and all the hours of the abolished Position No. 2.

Employees, by way of relief, ask this Board to re-establish Position No. 2 and to return the former occupant thereto. This Board has no authority to grant such relief. See Award No. 13840 (Coburn) and many others. However, the claimant can be made whole for his wage loss, which is the difference

between what he would have earned had Carrier not improperly abolished his position and what he did earn during the same period. The question of whether expenses claimed by the claimant can be allowed is not before the Board, no showing having been made that any were incurred.

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

Item 1 is sustained.

Item 2 is denied.

Item 3 is sustained to the extent that the Claimant is to be compensated in an amount equal to the difference between the amount he would have earned as the employe of the abolished position and the amount he actually earned while working at other positions, but the Claimant is not to be compensated for any expenses.

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.