



Award No. 15688
Docket No. TE-14644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville & Nashville Railroad, that:

1. Carrier is in violation of the terms and intent of an Agreement between the parties, which provided for the consolidation of maintenance forces in Nashville Terminal (Nashville, Tennessee) and letters of agreement thereon by General Chairman Burch and McWhorter dated January 4 and 16, 1960, respectively, when, effective at the close of work on Friday, August 31, 1962, it unilaterally abolished the L&N telephone helper position occupied by W. C. Hayes.

2. Carrier shall, because of the violations set out in paragraph one hereof, re-establish said telephone helper position and compensate W. C. Hayes and/or any other employee displaced by him, including the senior employee displaced from the line gang, and thereby deprived of employment, commencing sixty (60) days prior to February 11, 1963 (the date of the filing of this claim) a day's (8 hours) pay for each work day pro rated on the basis of \$400.46 per month, and so long thereafter as the violation herein complained of continues to exist.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Louisville & Nashville Railroad Company, hereinafter referred to as Carrier and its telephone and telegraph maintenance and construction employees, hereinafter referred to as employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective July 1, 1956, as amended.

Attached hereto and made a part hereof as Exhibit A is a copy of Memorandum of Agreement between said Carrier and said employees in connection with a merger of the Carrier and the Nashville, Chattanooga & St. Louis Railway Company, effective June 18, 1958.

Also attached hereto and made a part hereof as Exhibit B is a copy of a Memorandum of Agreement between Carrier and its telephone, telegraph,

General Chairman Warren extending the provisions of the June 18, 1958 agreement to L&N and NC&StL district employees working under the T&T agreements. For ready reference, copies of these two agreements are attached hereto. In other words, at the time the helper position was abolished effective August 31, 1962, we had effected an agreement covering T&T employees who might be adversely affected because of the merger. The abolishment of the helper position, however, was in no way connected with the merger of the two railroads. To the contrary, this position was abolished along with a number of other helper positions over the entire system in reorganization of the telephone department. For instance, the bulletin abolishing the helper position at Nashville also covered abolishment of helper positions at Clarksville and McKenzie, Tennessee, and as you know, helper positions were also abolished at numerous other points where no merger of L&N and NC&StL employees was involved.

I trust that with this further explanation you will agree there was no violation of the letter understanding or any other provision of the T&T agreement when the position of telephone helper was abolished at Nashville and that the claim will be withdrawn. Otherwise, my declination of June 19, 1963, must stand as I can see no basis for the claim under the agreement or otherwise.

Yours truly,

/s/ W. S. Scholl
Dir. of Personnel"

On December 5, 1963, the General Chairman replied to the Director of Personnel's letter of November 14, 1963, in which he still contended the claim was not barred by time limit rule, stated he could not agree with position taken by the Carrier in declining it, and gave notice that the claim was being appealed to President Leighty for further handling. Copy of the General Chairman's letter of December 5, 1963, is attached as Carrier's Exhibit DD.

This completed handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 31, 1962, Carrier abolished the job of Telephone Operator held by Claimant. Petitioner, alleging this action to be a violation of the Agreement, filed Claim on February 11, 1963. Carrier, at all stages of the handling on the property, denied the Claim for the given reason that it was not filed within 60 days of the occurrence of the alleged violation as required by Rule 33(a). It now moves that the Claim be dismissed. Petitioner contends that the Claim is for a continuing violation within the purview of Rule 33(e) and therefore timely filed.

This Board has consistently held since Award No. 10532 that a job abolishment is not a continuing claim within the contemplation of Rule 33(e). Carrier's motion to dismiss is granted.

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 Claim was not timely filed within the time limitation prescribed in Rule 33(a) of the Agreement; and, we are compelled to dismiss.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.