Award No. 16054
Docket No. TE-14441

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when on July 1, 1962, it unilaterally and arbitrarily, declared abolished the position of agent-telegrapher at Ochlocknee, Georgia, without in fact abolishing the work of the position and concurrently therewith transferred and assigned work of the position to employes not covered by the Telegraphers' Agreement at Thomasville, Georgia, namely G. L. Luke, agent; C. L. Blow, cashier; Hilda Moore, chief clerk, Agnes B. Scoggins, clerk, and C. J. Nix, clerk.

2. As a consequence of its violative action, the Carrier shall now be required to return the incumbent, E. R. Bush, to his regular assignment of agent-telegrapher at Ochlocknee, Georgia, and reimburse him for any and all monetary losses sustained in accordance with Article 8 of the Agreement.

3. By reason of this violative action Carrier shall compensate Telegraphers W. C. Walker, J. E. Lee, R. L. Arline, J. F. Smith, J. R. Mercer, T. E. Bolden, J. A. Matthews, R. R. Tyre and L. W. Smith, seniority in preference, eight (8) hours for each day at the prevailing rate of pay on the Waycross Division, commencing July 1, 1962 and continuing until the violation is corrected.

4. That a joint check of Carrier's records be made to determine who is entitled to compensation.

5. Carrier violated the Agreement between the parties when, on July 1, 1962, it unilaterally and arbitrarily declared abolished the position of agent-telegrapher at Rocky Point, North Carolina, without in fact abolishing the work of the position and concurrently therewith transferred and assigned work of the position to employes not covered by the Telegraphers' Agreement.

6. As a consequence of its violative action, the Carrier now shall be required to return the incumbent, J. A. Casha, to his regular assignment of agent-telegrapher at Rocky Point, North Carolina and reimburse him for any and all monetary losses sustained in accordance with Article 3 of the Agreement.

7. By reason of this violative action Carrier shall compensate Telegraphers J. R. Blanton and R. H. Johnson, seniority in preference, eight (8) hours each day at the prevailing rate of pay, $2.5128 per hour, for each and every day that the violation exists, commencing July 1, 1962.

8. A joint check at Carrier's records shall be made to determine who is entitled to compensation.

9. The Carrier violated the Agreement between the parties when on June 23, 1962, it unilaterally and arbitrarily declared abolished the position of agent-telegrapher at Orange Lake, Florida, without in fact abolishing the work of the position and concurrently therewith transferred and assigned work of the position to employes at other locations on the Ocala Division.

10. As a consequence of its violative action the Carrier shall now be required to return the incumbent, D. F. Dukes, to his regular assignment of agent-telegrapher at Orange Lake and reimburse him for any and all monetary losses sustained in accordance with Article 8 of the Agreement.

11. By reason of this violative action Carrier shall compensate Telegraphers Mrs. F. W. Heyward, Mrs. C. P. Griffin, I. Cohen, P. Etheridge, C. S. Sweet, T. E. Martin, A. C. Chastaine, R. R. Dence and J. W. Sapp, seniority in preference, eight (8) hours each day at the prevailing rate of pay applicable on the Ocala Division, commencing June 23, 1962, and continuing as long as the violation exists.

12. That a joint check of Carrier's records be made to determine who is entitled to compensation.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This submission embodies three claims which were handled separately on the property. All three of said claims were filed and handled in the usual manner up to and including the highest officer of the Carrier and have been declined.

For convenience in referring to the three disputes submitted herein, involving identical rules but handled separately on the property, Employes refer to claims arising at Ochlocknee, Georgia (paragraphs 1 through 4 of Statement of Claim) as Case No. 1, claims arising at Rocky Point, North Carolina (paragraphs 5 through 8 of Statement of Claim) as Case No. 2, and claims arising at Orange Lake, Florida (paragraphs 9 through 12 of Statement of Claim) as Case No. 3.

"ARTICLE 1.
SCOPE. BASIS OF PAY

(a) This schedule will govern the employment and compensation of Telegraphers, Clerk-Telegraphers, Telephone Operators (except switchboard operators), Agent-Telegraphers, Agent-Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators, Staffmen, Car Distributors and such agents as are shown in the wage scale.

The term 'employes,' as hereinafter used, embraces all of the above named classes.

(b) The employes herein specified will be paid on the hourly basis, except as may be otherwise shown in the wage scale.

(c) Articles 3, 4 and 5 do not apply to positions shown in the wage scale at monthly rates."

"ARTICLE 8.
RELIEF WORK. EXPENSES

Regularly assigned employes will not be required to perform relief work except in cases of emergency, and when required to perform relief work, and in consequence thereof, suffer a reduction in the regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations."

During handling on the property the Employes based their claim on their formal notice of November 8, 1961, reading as follows:

"No positions in effect on November 8, 1961, may be abolished or discontinued except by agreement between the Carrier and the Organization."

Conferences have been held on the property concerning this proposal, however, no agreement has been reached.

During appeal of this claim the Employes contended that the Carrier cannot discontinue any positions while there is pending their formal notice of November 8, 1961.

Carrier disagrees with the Employes' contention, as it is not supported by the Railway Labor Act or the current agreement.

OPINION OF BOARD: This dispute involves the Carrier's closing of three one-man agency stations along its main line, one each in Georgia, North Carolina and Florida.

Declining business at each of the three stations prompted the Carrier to apply to the appropriate state regulatory agency in each of the three states for authority to discontinue all agency service at the station in question. After

public hearings, each of the three states agencies issued orders approving the Carrier's application. Each of the stations was closed, all pursuant to the appropriate state agency's order. The telegrapher position at each station was discontinued, and the clerical work remaining was transferred to non-telegrapher positions at nearby stations.

The principal argument advanced by the Employes to support their claims depends upon the fact that, after the Carrier had applied to each of the three state regulatory agencies for authority to discontinue agency service at the stations, the Employes, on November 8, 1961, served on the Carrier the following "Section 6 Notice":

"November 8, 1961
File 1-6067

Mr. W. S. Baker, Assistant Vice President
Personnel Department
Atlantic Coast Line Railroad Company
500 Water Street
Jacksonville, Florida

Dear Mr. Baker:

Please accept this letter as a formal notice served under the provisions of Section 6 of the Railway Labor Act of the desire of the General Committee of The Order of Railroad Telegraphers to amend existing agreements by adding the following rule:

'No position in effect on November 8, 1961 may be abolished or discontinued except by agreement between the Carrier and the organization.'

This proposal is in addition to any other proposals for revisions of agreements heretofore made and not yet disposed of.

Please advise place, time and date for initial conference on this proposal. Your attention is directed to the 'status quo' provision contained in Section 6 of the Railway Labor Act.

Yours very truly,

/s/ J. W. Matthews
General Chairman"

Nothing in the record indicates what action, if any, was taken by either the Carrier or the Employes with respect to this "Section 6 Notice" after it was served on the Carrier. Nevertheless, the Employes contend that, under Section 6 of the Railway Labor Act, as amended, once the "Section 6 Notice" was served, it was unlawful for the Carrier to close the three stations in question (or, stated otherwise, to disturb the status quo) until the Carrier and the Employes had bargained to a termination on the Employes' proposed amendment to their working conditions agreement. The Employes finally contend that the "Section 6 Notice" of November 8, 1961 was later supplanted by a related such notice, under date of May 31, 1963, which led to bargaining which terminated in the "Stabilization of Employment" Mediation Agreement of February 7, 1965. It is the Employes argument that the three stations in ques-

tion could not have been closed, once the November 8, 1961 "Section 6 Notice" was served, until after February 7, 1965, and then only in accordance with the terms of the stabilization of Employment Mediation Agreement of that date.

As authority for their position, the Employes cite several decisions of the Supreme Court of the United States and the lower federal courts: Railroad Telegraphers v. Chicago & Northwestern Railway Co. 362 U.S. 330 (1960); Fibreboard Paper Products Corp., v. NLRB, 379 U. S. 203 (1964); United Industrial Workers of the Seafarers International Union v. Board of Trustees of the Galveston Wharves, 351 F. 2d 183 (5th Cir. 1965) and 368 F. 2d 412 (1966); and Texas and New Orleans Railroad Co. v. Brotherhood of Railroad Trainmen. 307 F. 2d 151 (5th Cir. 1962).

The Board notes that, in Railroad Telegraphers v. Chicago & North Western Railway Co., cited above, which case grew from a proposed closing of railroad stations under circumstances similar to those of the instant dispute, this same organization served upon a Carrier a "Section 6 Notice" identical (except for the date) to the one involved herein. Carrier refused to bargain and prepared to close the station. This same organization, rather than looking to this Board for relief, prepared to strike against the Carrier. The Carrier sought to enjoin the threatened strike, and the question went to the Supreme Court of whether the Norris-LaGuardia Act barred an injunction in such circumstances.

The Supreme Court, in holding in Railroad Telegraphers that the strike could not be enjoined, since it was a "labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, necessarily made certain findings of importance to the determination of the instant dispute: that the "Section 6 Notice" served by the organization was appropriate and operated to invoke the provisions of the Railway Labor Act; that the Carrier was thereby placed under an obligation to bargain with the organization concerning the closing of the station, even though state regulatory agencies had held hearings and had issued orders authorizing the closings; and that the dispute between the organization and the Carrier was a "major dispute" not governed by this Board, rather than a "minor dispute" of the type that should be heard by this Board.

Applying these findings to the instant dispute, the facts of which are similar in many ways to those in Railroad Telegraphers, the Board concludes that this is not the appropriate forum before which the Employes should complain that the Carrier violated the mandates to bargain and to maintain the status quo imposed by the Railway Labor Act.

Aside from Railroad Telegraphers, a careful reading of the Railway Labor Act compels this same conclusion. The Act clearly differentiates what has come to be called "major disputes" and "minor disputes," and different approaches are taken with respect to the two classes of disputes.

In Section 2 of the Act, the purposes of the Act are set forth, and the first differentiation is made concerning two classes of disputes:

"GENERAL PURPOSES

SECTION 2. The purposes of the Act are: . . . (4) to provide for the prompt and orderly settlement of all disputes concerning rates of

pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

The disputes referred to in Section 2(4) above have come to be called "major disputes," and those referred to in Section 2(5) have come to be called "minor disputes."

While the Act, in Section 2 Second, imposes upon Carriers and employes alike the obligation to consider and, if possible, to decide all disputes, whether "major" or "minor," with all expedition, in conference, the Act clearly establishes two separate procedures for handling the two classes of disputes.

Section 3 of the Act provides for the establishment of this Board, and while Section 3 (h) divides the "jurisdiction over disputes" among this Board's four divisions, the full extent of that jurisdiction is defined in Section 3(i) to be:

". . . disputes between an employe or group of employes and a Carrier or Carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. . . ."

The jurisdiction of this Board is, thus, over "minor disputes," those initially mentioned in Section 2(5) of the Act.

Section 4 of the Act provides for the establishment of the National Mediation Board, and Section 5 describes the functions of such Board. The first function of the National Mediation Board is to make its services available to either employes or to Carriers in the following cases:

"Section 5, First.

* * * * *

(a) A dispute concerning **changes** in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time." (Emphasis ours.)

One of the functions of the National Mediation Board is, thus, to offer its services to both parties when "major disputes" arise. These services embrace an entirely different approach than that of the Act to the solution of "minor disputes." "Major disputes" are subjected to mediation efforts of the National Mediation Board, to that Board's efforts to induce the parties to submit their controversy to arbitration, to arbitration if the parties agree to such, and finally to the possible scrutiny of an emergency board appointed by the President. During all the foregoing approaches to the solution of "major disputes," the Act imposes upon the parties the obligation of maintaining the status quo.

It should finally be noted that Section 6 of the Act, under which section the Employes have based the instant claim, is a section appearing in that portion of the Act the Congress has entitled "Functions of Mediation Board," not the Railroad Adjustment Board. Consider the language of Section 6:

> "SECTION 6. Carriers and representatives of the employes shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the Carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Notice is to be given of an intended "**change** in agreement affecting rates of pay, rules, or working conditions." This is the language of Section 5 First (a), where the services of the National Mediation Board, not the Railroad Adjustment Board, are stated to be available.

What is more, the status quo required by Section 6 is not to be altered by a Carrier "until the controversy has been finally acted upon as required by Section 5 of this Act, **by the Mediation Board,** unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the **Mediation Board.**" For this, and all the foregoing reasons, this Board is firmly convinced (1) that the Railway Labor Act differentiates "major disputes" and "minor disputes," (2) that "minor disputes" involve grievances and interpretation and application of agreements concerning rates of pay, rules, or working conditions, (3) that this Board only has jurisdiction over minor disputes not settled by the parties, (4) that "major disputes" involve changes in rates of pay, rules, or working conditions, (5) that this Board has no jurisdiction over major disputes, (6) that the parties to a major dispute, while they must initially preserve the status quo and suffer the mediatory and other efforts of the National Mediation Board and possibly the examination by an emergency board appointed by the President, are ultimately free to exert on each other whatever economic forces they possess, subject only to being called before courts of law to answer for any alleged violations of law.

This Board, the Railway Adjustment Board, is not entitled by law to determine whether the Carrier, in the instant dispute, altered working conditions of the Employes in violation of Section 6 of the Railway Labor Act. The Employes' proper forum was a United States district court. Their proper relief was an injunction, based upon a finding by a district judge that the Carrier had not yet removed itself from the status quo requirement of Section 6.

The Employes also urged that, aside from the Section 6 Notice, the Carrier had no right under the agreement to abolish the positions involved and

to transfer the remaining duties to employes not covered by the Agreement. The several reasons advanced to support this argument were considered by the Board in previous disputes between these same parties. The Board holds, as it did in Awards No. 6944 (Messmore) and 11120 (Dolnick), that the Carrier was entitled to do as it did.

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 no violation of the Agreement occurred.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.