



Award No. 16216

Docket No. TE-14875

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Elgin, Joliet & Eastern Railway, that:

1. Carrier violated and continues to violate the Agreement by unilaterally making, effective December 1, 1962, a change in the agent's position at West Chicago, Illinois, which resulted in the re-classification of said position to that of agent-telegrapher and forcing the occupant thereof to displace the occupant of the regularly assigned first shift telegrapher's position in JB Tower.

2. The Agreement was further violated by the removal from the agent's position at West Chicago, Illinois, the work and duties inherent thereto, and which has historically and traditionally been performed by the occupant of said position, and assigning said work and duties to persons or employees not subject to the Agreement.

3. Accordingly, we request that W. E. Bradley be returned to his position of first shift operator at JB Tower and paid pursuant to the provisions of Article 9 for each day beginning on the date he was improperly displaced by the agent, and continuing on a day-to-day basis until the violation is corrected, plus expenses incurred in making the transfer.

4. Further, all other employees under the Agreement who were displaced or otherwise adversely affected by the improper change at West Chicago, Illinois, be paid under the provisions of Article 9 for each day until the violation is corrected, plus moving expenses incurred.

5. Further, the agency work of the agent's position at West Chicago be restored to the Agreement and to the employee who acquired said position by the exercise of seniority.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as Carrier, and its employees in the Telegraphers'

"MEMORANDUM OF UNDERSTANDING

* * * * *

Article 1 - paragraph (c) - 'Improvements or changes in the method of performing work' shall not operate to prevent the Carrier from consolidating and/or abolishing positions covered by this Agreement due to such improvements or changes.

* * * * *

"ARTICLE 14.

* * * * *

(g) In event one or more positions are abolished the incumbents may displace any regular assigned employee providing seniority and ability are sufficient and claim is made within ten (10) days. An employee displaced under this Article may exercise his seniority as provided herein. An employee who fails to exercise his seniority as provided herein shall revert to the extra list."

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim arises out of Carrier's abolishment of the first trick tower operator's position at West Chicago, Illinois and the simultaneous consolidation of the Agent's job with said first trick operator's job at JB Interlocking Tower, West Chicago, Illinois on December 1, 1962. Petitioner contends that certain clerical work of the consolidated position was re-assigned by Carrier to employees outside the Scope of the Agreement between the parties in violation of Article 1(c) of said Agreement. Petitioner requests that Claimant W. E. Bradley be returned to his former position of first trick operator and compensated for each day beginning on the dates of his displacement. Petitioner seeks compensation for all other employees under the Agreement who were displaced or otherwise adversely affected by the disputed changes at West Chicago, Illinois.

In the first instance, Carrier contends that paragraph (4) of the Claim must be dismissed pursuant to Article V of the August 21, 1954 Agreement as the group of employees described therein are not named nor readily ascertainable. It is well established that claims must sufficiently describe particular Claimants so that they are readily ascertainable. Paragraph (4) of the instant claim is patently deficient in describing unnamed claimants, and must be dismissed. (Awards 14498, 14470, 14425, and others.)

As to the merits of the dispute, the record reveals that the instant claim was brought by the operator whose position was abolished and who displaced another operator position with identical duties on the night shift. No claim is presented on behalf of the former Agent at West Chicago, Illinois, who presently serves as the Agent-Operator in the consolidated position. The named Claimant performed no clerical duties prior to December 1, 1962, nor does he perform any in his present position on the night shift. Thus, we are here concerned with certain clerical work formerly performed

by the Agent at West Chicago prior to the consolidation, which allegedly was transferred to non-covered employees at East Joliet, Illinois in violation of the applicable Agreement.

The pertinent provisions of the ORT Agreement, effective September 1, 1949 and the Memorandum of Understanding, which became effective on the same date, read as follows:

"ARTICLE 1.

* * * * *

(c) Improvements or changes in methods of performing work covered by this agreement shall not operate to take the work out from under this agreement."

"MEMORANDUM OF UNDERSTANDING

* * * * *

Article 1 - paragraph (c). 'Improvements or changes in the method of performing work' shall not operate to prevent the Carrier from consolidating and/or abolishing positions covered by this Agreement due to such improvements or changes."

Article 1(b) of the Agreement, entitled Wage Scale, contains rates of pay for classifications at specific locations. The positions involved in this dispute are included in the list. Petitioner argues that these specified positions cannot be removed without negotiation and agreement between the parties. We cannot agree, as the Caption clearly indicates that the purpose of the list is to memorialize the "Wage Scale" for positions existing when the agreement was executed. Award 15443.

Petitioner further contends that no work performed by any position listed in Article 1(b) may be taken out from under the Agreement and transferred to non-covered employees as a result of abolishing or consolidating positions. Thus, the limited issue remaining for determination is whether work belonging to the former Agent's position at the time of consolidation was assigned to employees of another class in violation of Article 1(c) of the ORT Agreement.

Carrier denies that any exclusive clerical duties belonging to telegraphers, incidental or otherwise, were transferred to non-covered employees, and urges that like consolidations have occurred at other stations throughout Carrier's system under similar circumstances pursuant to Article 1(c) as interpreted by the Memorandum of Understanding.

It is well established that Carriers may determine the manner in which work and operations are to be performed in the best interest of efficiency and economy, unless such rights are restricted by Agreements. Awards 14041, 13635, 13048, 12386, and others. In this case, the Memorandum Agreement of July 8, 1949 clearly provides that improvements or changes in the method of performing work shall not operate to prevent Carrier from consolidating

and/or abolishing positions covered by the basic Agreement between the parties.

Specifically, Petitioner objects to the alleged transfer of certain clerical functions from the former Agent's position at West Chicago, Illinois to employment outside the Agreement at East Joliet, Illinois. The record fails to disclose any competent evidence to support Petitioner's general assertion that the precise work in issue was reserved exclusively by telegraphers. Furthermore, Carrier submits that no disputed clerical duties remain that might be performed at West Chicago, Illinois.

Even though some work was transferred to employees not covered by the Agreement at the time of the consolidation, such work was clerical by nature, and not specifically reserved to the Telegraphers under the general Scope Rule found in the controlling Agreement. There is no presumption of exclusivity, and Carrier has offered probative evidence refuting Petitioner's claim that the disputed work is by its nature of a type reserved to Telegraphers over the Carrier's system.

Petitioner has the burden of establishing through competent evidence that such incidental clerical work belongs exclusively to telegraphers based on tradition, custom or practice on the property. Awards 15402, 14839, 13622, and others. Petitioner has failed to offer such proof, and we must conclude that Carrier did not violate the Agreement. Accordingly, the Claim will be denied.

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 not violated.

AWARD

Paragraphs (1), (2), (3) and (5) of the Claim are denied.

Paragraph (4) of the Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1968.

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