

Award No. 16509
Docket No. TE-15632

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on The Pennsylvania Railroad that Carrier, without conference or negotiation violated the provisions of the Telegraphers' Agreement on February 28, 1962, when it abolished the position of Agent at Switz City and told Mr. Lawson to exercise his seniority, but did not abolish work. Claimant M. O. Lawson shall be compensated for any loss in earnings, travel expense and any other expense which may occur, retroactive to March 1, 1962 and all subsequent dates until such time violation ceases.

EMPLOYEES' STATEMENT OF FACTS: The current Agreement between the parties has been effective since September 1, 1949, superseding previous Agreement of May 16, 1943. The scope thereof provides:

"SCOPE.

The provisions set forth in this Agreement shall constitute separate Agreements between The Pennsylvania Railroad Company and its employes, and the Baltimore and Eastern Railroad Company and its employes, of the classifications set forth below, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes classified herein.

**"The Pennsylvania
Railroad Company**

**Group 1 - Station Agents and
Assistant Agents
Classified herein.**

**Group 2 - Managers and Assistant
Managers, Wire Chiefs and**

**Baltimore & Eastern
Railroad Company**

**Station Agents and Assistant
Agents Classified herein.**

intendent, Stations. The Superintendent, Stations denied the claim under date of March 12, 1962, following which the District Chairman listed the claim for discussion with the Superintendent-Personnel of the former Southwestern Region.

The Superintendent-Personnel, following a review of this matter at a meeting on April 11, 1962, denied the claim in his letter of May 7, 1962, resulting in the formulation of a Joint Submission for the further handling of the dispute by the General Chairman of the Organization with the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. A copy of the Joint Submission is attached as Exhibit B.

The Claim was discussed by the General Chairman with the Manager, Labor Relations at a meeting held on June 4, 1964, following which the latter, by letter dated June 22, 1964, denied the claim. A copy of this letter is attached as Exhibit C.

Therefore, so far as the Carrier is able to anticipate the basis for this claim, the questions to be decided by your Honorable Board are whether the abolishment of Claimant Lawson's agent position was violative of the Telegraphers' Agreement, and whether the Claimant is entitled to the compensation which he claims.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regularly assigned Group I Agent at Switz City, Indiana, when the Carrier abolished same and converted it to a non-agency carload-only station. Contemporaneously, Carrier began installation of an automatic interlocking system.

The Organization contends that the abolishment of the Agency should have been negotiated, and that the agency was not actually abolished. Carrier contends that its action need not be negotiated, and that regardless, its action was authorized by the Indiana Public Service Commission and the Interstate Commerce Commission.

A perusal of the record discloses that both the Indiana Public Service Commission's order and the Interstate Commerce Commission's order were permissive. It also discloses that the Organization was not a party thereto. Further, it is readily apparent that pursuant to the Railway Labor Act that neither would be the proper forum to resolve the instant dispute. See Awards 3738 (Wenke) and 5375 (Donaldson); also see *Texas & N.O.R. Co. v. Brotherhood of Railroad Trainmen*, 5th Cir., 307 F. 2d 151 (1962).

In Award 7859 (Shugrue) we were faced with a similar situation. There we stated:

"... the Carrier may, in the interest of efficiency and economy of its operations, abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the Agreement..."

In addition, this Board has required that the duties of the position be in fact abolished. See Award 6944 (Messmore).

With regard to the Organization's contention that the abolishment must have been negotiated, same turns on the application of paragraphs 3 and 4 of the Agreement of 12 April, 1938. Same read as follows:

"3. When Agency duties diminish to an extent which warrants extending the jurisdiction of an Agent or Assistant Agent to include one or more additional stations subsequent to April 12, 1938, such action will be a proper subject for negotiation.

4. When an Agency station is abolished, and in lieu thereof a prepaid non-agency station is established, such action will not require the continuance or establishment of an Agent or Assistant Agent position at such station."

The negotiations required in paragraph 3, above quoted, are clearly for the benefit of the proprietor of the position at the agency where the jurisdiction is being extended, not for the benefit of the one where the agency is being abolished. Inasmuch as this is so, the Claimant, being the agent at the abolished station, has no cause to complain under paragraph 3. Further, we hold that his change in status by virtue of a seniority "bump" to the agency extended, same being subsequent to the abolishment of the Switz City Agency, does not alter Claimant's position. Obviously, paragraph 3 could only be concerned with the status at the time of the event.

Here, the station was closed at Switz City and the telegrapher position was discontinued. The block operator work remaining, same being Group 2 work but within the same craft, was transferred to block operators. Said work was no longer intermingled with agency work, did not take full time and kept in operation until the automatic interlocking plant could be finished. It follows that Claimant had no demand right under the Agreement for the interlocking work. See Awards 6944 (Messmore) and 16054 (Kenan).

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.

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