



Award Number 17819

Docket Number TE-17850

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk and Western Railway (Virginian Lines), that:

Account materially or substantially changed conditions, effective April 1, 1967, the hourly rate of the first trick Elmore, West Virginia, shall be increased \$.0735 per hour.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on various provisions of the collective bargaining Agreement, effective September 1, 1945, as amended and supplemented, between the Transportation-Communication Employees Union and the Norfolk and Western Railway Company (Virginian Lines). The claim was handled on the property in the usual manner up to and including a conference with the highest officer designated by the Carrier to handle such claims where it was discussed on November 28, 1967.

This claim arose when Carrier assigned the work of preparing interchange reports to the first trick telegrapher-clerk at Elmore, West Virginia without first notifying the General Chairman as required by a special Agreement.

Carrier did not deny that it failed to comply with the provisions of the Agreement in question but resisted the claim on the grounds that (1) the preparation of the reports in question required no special skill and (2) telegrapher-clerks on the former Virginian Railway had always performed the same type of work without additional compensation.

(b) ISSUES

The issues are:

1. Did the Carrier violate the provisions of the Memorandum of Agreement dated June 18, 1946 when it assigned the work of preparing interchange reports to the first trick telegrapher-clerk at Elmore, West Virginia without first notifying the General Chairman?

2. Damages for breach of Agreement.

(c) FACTS

The station involved in the instant claim, Elmore, West Virginia, is located on Carrier's New River Division. This territory is part of the former

as amended, in the same manner and to the same extent as if the Norfolk and Western had been a party thereto; provided, however, that the assumption of such agreement shall not prevent the consolidation of facilities and integration of employment forces subject to implementing agreements upon application of the terms of the Washington Job Protection Agreement and this agreement."

It, therefore, follows that the Telegraphers' Schedule of September 1, 1945, and Supplements thereto, remained in effect insofar as former Virginian Railway employees are concerned, such as are involved in this dispute.

(Exhibits Not Reproduced)

OPINION OF BOARD: In this case the Employees request an award requiring the Carrier to increase the rate of pay of the first trick at Elmore, West Virginia, by \$.0735 per hour.

The dispute arose as a result of Carrier's assigning the preparation of interchange reports to the occupant of this position, which position was classified as "Telegrapher-Clerk" both before and after the interchange work was assigned. This work was formerly performed by occupants of agency positions whose positions had been abolished.

The claim is predicated upon an alleged violation of a Memorandum of Agreement dated June 18, 1946, which requires notice and negotiation when work "not within the classification of the position" is to be assigned.

The nature of the work here in question obviously is clerical. We have carefully searched the record for any evidence that it is "not within the classification of the position" to which it was assigned, but have found none. And since it is well settled that the burden of presenting evidence to support a claim lies upon the petitioner, we must deny the claim herein, without expressing an opinion concerning other aspects of the parties' contentions.

We feel obliged, however, to note that Award 15004, relied upon by the Employees, and involving these same parties, is clearly distinguishable. The question at issue there was reclassification of a position, while here there was no reclassification of a position.

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.