



Award No. 18546
Docket No. TE-18998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago and North Western Railway, T-C 5775, that:

1. Carrier violated the Agreement between the parties when, commencing August 4, 1969, it assigned an employe not covered thereby to the second shift Telegrapher-Clerk position at Ishpeming, Michigan, and thereafter required and/or permitted such non-telegrapher employe to perform work of handling train orders, report train movements and other duties of telegrapher employes.

2. Carrier shall, as a result, compensate the senior idle telegrapher on the seniority district, extra in preference, a day's pay at the appropriate rate prescribed in the Agreement which he would have received had he been used, commencing August 4, 1969 and until the position and/or work is restored to employes covered thereby.

CARRIER DOCKET: 6-15-101

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

There is offered into evidence an Agreement between the parties, effective April 1, 1950, as amended and supplemented, which is on file with your Board and by this reference is made a part of this submission.

The claim was timely presented, progressed, including conference with highest officer designated by Carrier to receive appeals, and has remained declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The claim arose when the Carrier entered into an agreement with the Lake Superior and Ishpeming Railroad establishing a joint agency at Ishpeming, Michigan, where prior thereto it had maintained a separate agency with a work force of an Agent-Telegrapher and Telegrapher-Clerk, both of which came within the Scope of the Telegraphers' Agreement. As a result of this consolidation, the former agent of the LS&U Railroad was assigned to a newly created Telegrapher-Clerk position established in the CNW station, and was permitted

The Carrier asks that the claim be dismissed by this Division on the ground that the Organization failed to exhaust the remedies available to it in Section 13 of the Washington Agreement of May, 1936.

In Award 11590, involving a similar dispute, this Division held:

"It is uncontroverted that the action taken by Carrier in the abolishment of positions and transfer of the work to M-P employees was a 'coordination' within the meaning of that term as defined in Section 2 (a) of the Washington Agreement. The issue narrows as to whether a carrier may derogate the existing collective bargaining contract in the absence of fully complying with the procedures and obligations attendant to a 'coordination' imposed by the Washington Agreement.

As we read Section 5 of the Washington Agreement it imposes an absolute bar to carrier making an assignment of employees necessary to a 'coordination' unless it is done on the basis of an agreement between the carriers and the organizations of the employees affected. If the parties fail, through negotiations, to reach the indispensable agreement, which is a *condition precedent* to any assignment of employees, the burden is upon the carrier to have the dispute resolved by submitting it for adjustment in accordance with Section 13. It is the Carrier who seeks the privilege of effecting a 'coordination' with the protections afforded by the Washington Agreement. Therefore, it is the Carrier who must fully comply with the mandates of the Washington Agreement to establish it as a defense to what, otherwise, would be a violation of the collective bargaining agreement.

Where, as in this case, the carriers and organizations of the employees affected failed, through negotiations, to reach an agreement as to the assignment of employees made necessary by the proposed 'coordination,' Carrier was not free to arbitrarily assign employees, as it unilaterally chose, and realize compliance with the Washington Agreement. Carrier had a remedy under Section 13 of the Agreement. Until that remedy was exhausted and Decision issued, Carrier was *not to effectuate the 'coordination.'* Such a Decision may have directed the Carriers to make an assignment of employees entirely different than that which Carrier unilaterally and arbitrarily did.

Carrier having failed to comply with the Washington Agreement we find that Agreement is not a defense to Carrier's violation of the collective bargaining Agreement. See and compare the following Decisions of referees appointed pursuant to Section 13 of the Washington Agreement: Docket No. 57, Docket No. 70 and Resubmitted Docket No. 70."

We find the above holding to be sound and it is adopted herein. See also Awards 14401, 15028, 15087, 15460. Part 1 of the claim will be sustained.

The record does not contain sufficient information upon which to base a firm decision as to the reparation required. Therefore, we will remand this portion of the dispute to the parties directing them to determine, from examination of the Carrier's records, the dates when the LS&I employe handled train orders or other work exclusively reserved to C&NW telegraphers under the subject Agreement. The Carrier then shall compensate a C&NW tele-

violation of the Washington Job Protection Agreement. A copy of this letter is attached as Carrier's Exhibit "H." The General Chairman has thereafter progressed this same claim in two separate sets of correspondence, one alleging violation of the schedule agreement and the other alleging a violation of the Washington Agreement. The "Statement of Claim" in the notice of August 14, 1970 from the President of the T-C Division, BRAC, to the Executive Secretary of the Third Division, N.R.A.B., indicates that the organization has chosen to present a claim involving an alleged violation of the schedule agreement to the Third Division. It is not clear whether it is the intention of the organization to present this same dispute to the Disputes Committee established under Section 13 of the Washington Agreement, or whether their action in submitting this dispute only to the Third Division recognizes that the claim which the General Chairman has progressed in parallel sets of correspondence constitutes one and the same dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 20, 1969, the Carrier had an Agent-Telegrapher and one Telegrapher-Clerk employed at Ishpeming, Michigan. On that date notice was served upon the employees to coordinate its force at Ishpeming with the forces of the Lake Superior and Ishpeming Railroad, under the provisions of the May, 1936 Washington Agreement. Conferences were held but no agreement was reached providing for coordinating the work forces of the two Carriers.

On July 27, 1969, notice was issued by the Chief Dispatcher as follows:

"Effective Monday, August 4, 1969, C&NW and LS&I station forces at Ishpeming will be consolidated into a single force.

Effective 12:01 A.M., Monday, August 4th, the hours of assignment for the telegrapher positions at Ishpeming are changed and will work as follows:

3rd Tel-Clk, Job No. 001, from 12:01 A.M. to 8:00 A.M., Monday thru Fridays, a five day position, with Saturday and Sundays as assigned rest days. Present incumbent, Mr. P. A. Zalec, will retain this position.

2nd Tel-Clk position from 4:00 P.M. to 12:00 midnight, Monday thru Fridays, a five day position, with Saturday and Sundays as assigned rest days will be occupied by Mr. Ray Frederickson, former LS&I Agent.

Agent-Tel position, Job No. 002, from 8:00 A.M. to 4:00 P.M., Monday thru Saturdays, a six day position, with Sundays as assigned rest day, and present incumbent Mr. D. D. Ostwald will retain this position.

Notify all concerned."

Claim was then initiated by the Petitioner contending that the Telegraphers' Agreement was being violated, commencing August 4, 1969, and continuing thereafter, on each date that an employee not coming within the Scope of the Agreement was permitted to perform the work of the second shift Telegrapher-Clerk position at Ishpeming, Michigan, which is the claim before the Division.

grapher, assigned at Ishpeming, for each such date under the appropriate call or overtime rule of the Agreement.

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 violated to the extent shown in Opinion.

AWARD

Claim sustained to the extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.