

Award No. 19007
Docket No. TE-13188

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)
PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pacific Electric Railway, that:

1. Carrier violates the terms of an agreement between the parties hereto by establishing a position of Station Clerk at the Azusa-Glendora agency, under an agreement of another craft and class to perform Assistant Agent's work incidental to the Azusa-Glendora, California agency, and concurrent therewith declared abolished the position of Assistant Agent, Azusa-Glendora, California, subject to said Telegraphers' Agreement.

2. Carrier shall, because of the violation set out in paragraph 1 hereof;

(a) Restore William Hambly to the Assistant Agent's position at the Azusa-Glendora agency from which he was improperly removed.

(b) Compensate said William Hambly a day's pay (8 hours) at the hourly rate of the Azusa-Glendora Agent's position commencing January 12, 1961, and each work day thereafter so long as the violation complained of continues; plus actual necessary expenses incurred by reason of Carrier's improper act,

(c) Compensate other extra or regular assigned Agents or Assistant Agents who have, by reason of Carrier's violative act, been deprived of work, plus actual necessary expenses, commencing January 12, 1961, and for each work day thereafter so long as the violation complained of continues.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto, effective August 1, 1955, except as otherwise indicated and as amended.

Addendum No. 1 of this agreement is the Wage Scale. That part of the Wage Scale pertinent here reads:

OPINION OF BOARD: For many years, Carrier maintained separate one-man agencies at Azusa and Glendora, California. An Agreement between the Telegraphers' Organization and Carrier at these points was first entered into Sept. 16, 1934. An Agreement between the Clerks' Organization and Carrier was first entered into August 11, 1941. The work load increased, especially at the Azusa Agency and more positions were established throughout the post-war "boom" period. Glendora Agency remained a one-man agency, and the volume of business drastically declined. After long negotiations between Carrier and the Telegraphers' Organization, the Agent at Glendora was physically transferred to Azusa effective January 15, 1952, although the Glendora Agent continued to operate the Glendora station. In 1952, business at Glendora declined to the extent that negotiations were entered into with the Telegraphers' Organization which, on July 16, 1955, led to the reclassification of the agent at Azusa to Agent Azusa-Glendora, and the agent at Glendora (physically located at Azusa) to Assistant Agent, Azusa-Glendora. On November 11, 1955, a Station Clerk Position was abolished at Azusa which prompted the Clerks' Organization to file a Claim based upon the contention that the abolished Clerk's work had been assigned to the newly created position of Agent Azusa-Glendora. This Claim, on appeal, reached the Third Division of this Board where Carrier contended that this Board was without legal authority to render an Award without giving proper notice to the Telegraphers' Organization. See Docket No. CL-9218. Pursuant to Carrier's contention concerning such notice, formal notice was served on the Telegraphers' Organization on April 14, 1960. This notice advised that the Telegraphers' Organization had the right to appear at the hearing scheduled for May 11, 1960, and to file whatever papers and/or documents they deemed necessary. The Telegraphers' Organization declined to appear or take part in the hearing as evidenced by their letter of April 19, 1960. Thereafter, Docket No. CL-9218 resulted in Award 9546 which held that the work assigned to position of Assistant Agent-Azusa-Glendora was clerical work and belonged to the employees working under the Clerks' Agreement. As a result of Award 9546 rendered by this Board on September 9, 1960, on January 11, 1961, Carrier abolished the position of Assistant Agent-Azusa-Glendora. On January 12, 1961, Carrier established a clerical position at Azusa and transferred the work of the abolished Assistant Agent-Azusa-Glendora to the clerical position. This action by Carrier prompted the instant claim to be filed by the Telegraphers' Organization on the grounds that Carrier's act in abolishing the Assistant Agent's position and transferring all of the duties thereof to employees not covered by the Telegraphers' Agreement constituted a violation thereof. Carrier contends that because of Award 9546 it had no choice but to take the action it took; and that Award 9546 constitutes res judicata in the instant case.

In substance, the Telegraphers' Organization in this instance urges that Carrier has contracted the same work to separate Organizations and should be required to honor both contracts. An advocate for the Clerks' Organization was present at the panel discussion and concurred with this theory.

The Scope Rule of the effective Agreement is general in nature and the Organization has failed to establish through competent evidence that Telegraphers historically and customarily perform the work claimed in this instance to the exclusion of Clerks. There are many Awards upholding Carrier's right to abolish positions and re-assign any remaining work that is not exclusively Telegraphers' work to other crafts. Award 14839 (Wolf), 14744 (Rambo), 13243 (Englestein), 12695 (Hamilton), and 11120 (Dolnick), and many others.

It is axiomatic that the Carrier has the prerogative of managing its business and may abolish positions and re-assign remaining work as it deems necessary unless specifically restricted by the Agreement. In this instance, the Organization has failed to cite a rule violation by the transfer of work from Telegraphers to Clerks.

Also, there are principles of law involved in this dispute that can not be passed unnoticed. As stated above, the work involved in this dispute was awarded to the Clerks' Organization in Award 9546 of this Board. It is also noted, as stated above, that the Telegraphers' Organization issued due notice giving the right to protect this position by whatever action they deemed necessary. The record also discloses that the Telegraphers' Organization declined to take part in this hearing. Award 9546 became final and binding upon all of the parties including the Telegraphers' Organization. Also, Award 9546 became res judicata to the involved issue. 46 Am Jur. 2d 415 states as follows:

"The doctrine of res judicata is especially applicable where protracted and multiple litigation of similar issues appears to be in the offing. Indeed, it is a fundamental principal of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, or conclusively settled by a judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action. In this respect, it is worthy of notice that the non-existence of a fact may be established by a judgment, no less than its existence; a party may be precluded under the doctrine of collateral estoppel from attempting a second time to prove a fact that he sought unsuccessfully to prove in a prior action.

The rule precluding the relitigation of facts or questions formerly in issue applies whether the issue decided in the earlier action was presented as a ground of recovery or as a defense, or whether the issue was decided in the earlier action in favor of plaintiff or the defendant, and even though the subsequent action is a different form of proceeding, is upon a different cause of action, and involves a different subject matter, claim or demand, than the earlier action. In such cases, it is likewise immaterial that the two actions have a different scope, or are based upon different grounds, or are tried on different theories, or are instituted for different purposes, and seek different relief."

Had no notice been issued to the Telegraphers in Docket No. CL-9418, the Telegraphers' position would have probably been stronger in this instance. However, in this case, the claim of Telegraphers is barred because of the doctrine of res judicata.

It appears to this Board that Carrier has acted in good faith throughout the history of this dispute. The Carrier did not arbitrarily or unilaterally abolish the Telegraphers' work involved herein. Carrier acted at the direction of the National Railway Adjustment Board whose decisions are final and binding in all instances where notice has been sent to all interested parties. Certainly, the Telegraphers are interested parties in Docket CL-9218 which resulted in Award 9546 of this Board. This 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.