

Award No. 19019
Docket No. TE-14512

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Soo Line Railroad, that:

1. Carrier violated the Agreement between the parties when it declared the position of Agent-Operator at Camden Place, Minnesota to be abolished effective July 1, 1956, and transferred the work of the position to employees not covered by the Agreement.

2. Because of this violation, Carrier shall be required to compensate R. C. Pfahl, the occupant of the position at time of the alleged abolishment of said position, and any and all other employees adversely affected by such alleged abolishment, for all wages lost and expenses incurred by reason thereof.

EMPLOYEES' STATEMENT OF FACTS: The agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Attention is directed to the fact that Statement of Claim shows the Agent-Operator position at Camden Place to be abolished effective July 1, 1956, whereas the correct date is July 31, 1962. This was corrected by letter dated December 19, 1963, addressed to the Executive Secretary of your Board, with copy to the Carrier representative.

Camden Place, Minnesota station is located about five miles from the Carrier's yard office at Minneapolis, Minnesota. Prior to July 31, 1962, there was an agent-operator position, fully covered by the agreement, at Camden Place. Brother R. C. Pfahl was the incumbent of this position. The duties of the position are briefly stated below:

Handle all station accounting incidental to the business at Camden Place which amounts to a gross in excess of one million dollars per year.

Prepare freight bills and make all collections of charges, remitting such monies in the prescribed manner.

ferred by the former occupant of the position as well as any others adversely affected by changes resulting from the abolishment.

Copies of the schedule agreement between the parties to this dispute, effective July 1, 1946, and supplements thereto, are on file with the Board and made a part of this record by reference.

OPINION OF BOARD: It is a right of an employer to abolish a position it has created unless to do so would be contrary to law or contrary to an agreement, express or implied, which the Employer has with its employees or their bargaining representatives.

In the instant case, the Organization alleges, among other things, that the Carrier violated its agreement with the Organization when it abolished the position of Agent-Operator, R. C. Pfahl at Camden Place, Minnesota and transferred the remaining work to clerical employees at Minneapolis who are not subject to the Agreement between the parties to this dispute.

It has long been established that a position established pursuant to the provisions of an agreement, as in the dispute before us, may not be unilaterally abolished by the Carrier and its remaining work assigned to employees of another craft if the remaining work is of a nature typical of the craft classification and exclusively reserved to employees of the craft of the original occupant of the position.

There is no question about the fact that the claim made herein would have to be granted if the Organization had been able to make a convincing showing that the remaining work was of a type exclusively reserved to the craft of Claimant, R. C. Pfahl. We find no such showing and we concur in the contention of the Carrier representative at the panel discussion that in this case the remaining work was clerical work, not strictly telegraphic work, and could be transferred to employees not subject to the Agreement.

The Organization argued that Carrier may not abolish the involved position after receiving a notice requesting a new rule under Section 6 of the Railway Labor Act. The Organization had requested a new rule reading as follows:

"No position in existence on December 1, 1961 may be abolished or discontinued except by agreement between the Carrier and the Organization."

The Organization states in effect that the serving of a Section 6 notice forbids a Carrier from altering the status quo as to rates of pay, rules or working conditions which the parties are obliged to maintain until the procedures of the Railway Labor Act are followed to the end with respect to such rule change controversy. This is true but a part of the status quo to be frozen is the practice of the Carrier of unilaterally abolishing positions which the Organization stated was the purpose of its own Section 6 notice.

We agree with the portion of Carrier's letter that reads:

"Such rights that the Carrier might exercise prior to the serving of the Section 6 notice, Carrier may continue to exercise, notwithstanding the serving of a request for rules changes."

In view of the foregoing, the Board finds that the action of the Carrier was proper and that the claim should be denied.

On June 3, 1971, the Board gave notice to the Clerks' Organization, the third party in this case, that a hearing would be held but the Clerks responded that they would not file a submission or attend the hearing.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and hold:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 28th day of February 1972.

CONCURRING STATEMENT OF CARRIER MEMBERS — AWARD 19019, DOCKET TE-14512

(Referee Hayes)

With respect to Petitioner's contention that Carrier violated Section 6 of the Railway Labor Act, attention is respectively directed to our awards which properly recognize that this Board does not have jurisdiction to determine whether Section 6 has been violated. See Awards 16054, 16056, 16057, 16058, and 19068.

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