

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19358  
Docket Number TE-17522

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( (Formerly Transportation-Communication Employees Union)

PARTIES TO DISPUTE: (

(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Denver and Rio Grande Western Railroad, that:

1. Carrier violated, and continues to violate the current Agreement, and the February 7, 1965 Agreement, when effective with close of shift Friday, November 11, 1966, it unilaterally declared the position of second trick telegrapher Clearfield, Utah abolished, although the work of such position remained to be performed, removed the incumbent Mr. E. A. Baca therefrom and required him to exercise his seniority over junior employees, and thereafter, effective Monday, November 14, 1966, created a new position at Clearfield, Utah, under another agreement, for the specific purpose of performing the duties of the telegrapher position, declared abolished.

2. Carrier shall now restore Telegrapher E. A. Baca to his position of second trick telegrapher, Clearfield, Utah, and in addition shall compensate the senior idle telegrapher (extra in preference) one day's pay of eight (8) hours at the rate of the position declared abolished, commencing November 14, 1966, and continuing each work day thereafter, until the work of the allegedly abolished second trick telegrapher position, Clearfield, Utah, is returned to Mr. Baca and/or the Agreement.

3. Carrier shall also compensate Telegrapher E. A. Baca, and any other employees adversely affected, for any loss of wages or expenses incurred, because of the violation stated in (1) above.

4. The Claimants in (2) and (3) above shall be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The claim herein arose in connection with the abolishment of second trick telegrapher position at Clearfield, Utah, and the establishment of a position under the Clerks' Agreement.

The Carrier states that the installation of a Centralized Traffic Control system between Salt Lake City and Ogden, Utah, was completed October 27, 1966, which installation eliminated the need for train orders between those points so that there was no further need for a second trick telegrapher to handle train orders or messages of record governing train operations at Clearfield, Utah, and effective November 11, 1966, the second trick telegrapher position was abolished since there was no longer any telegraphic work to be performed. Effective November 14, 1966, a position under the Clerks' Agreement was created to handle clerical work which had previously been performed by the second trick telegrapher. The Petitioner alleges that the second trick telegrapher position was abolished without abolishing the work thereof, resulting in a violation of the Telegraphers' Agreement.

There have been numerous disputes before this Board in connection with the abolishment of telegrapher positions and the assigning of clerical work to clerks. The Carrier contends that that was what was done in this case.

Based upon our review of the entire record we find that in the handling of the dispute on the property the Organization did not prove with probative evidence that work reserved to telegraphers was assigned to the clerical position that was established November 14, 1966. Assertions were made by the Organization, but probative evidence was not offered in support thereof, and it is well settled that mere assertions do not constitute proof. Train orders are no longer handled at Clearfield and there is no positive showing that the clerk handles communications governing or controlling the movement of trains. There is no violation of the agreement in the abolishment of a telegrapher position and assigning strictly clerical work to clerks. See Awards 9344, 11120, 12757, 13442 and 19101, among others.

We find that the Organization has failed to prove a violation of the applicable telegraphers' agreement and the claim will, therefore, be denied. While the Petitioner cites the February 7, 1965 Job Stabilization Agreement, if a dispute exists involving the interpretation or application of that Agreement the forum to resolve it is the Disputes Committee established under the agreement. In view of our decision on the merits of the dispute, it is not necessary to pass upon the procedural issues raised by the Carrier.

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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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.