

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19765
Docket Number TE-19372

Robert M. O'Brien, Referee

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

PARTIES TO DISPUTE: (
(Reading Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Transportation-Communication Division, **BRAC**, on the Reading Company, T-C 5805,
that:

1. Reading Company violated our current Agreement beginning October 5, 1969 when and because they abolished the Telegrapher Clerk's position at "**JN**" **Newberry Jct.**, with hours of 9:00 P.M. to 6:00 A.M. with lunch period from 2:00 A.M. to 3:00 A.M., that was held by J. Roscoe and Relief Man R. K. Bartley, without proper notice and by unilateral action.

2. Account of the above violation the Reading Company is required to pay the senior idle telegrapher, extra in preference a day's pay at the rate they would have received if used to properly fill this position. The following men were available for the first week following the violation:

Sunday, October 5, 1969		R. H. Rhodes
Monday, October 6, 1969	-	R. O. Yerger
Tuesday, October 7, 1969	-	W. s. Peifer
Wednesday, October 8 , 1969	-	M. J. Mackavage
Thursday, October 9, 1969	-	J. Shekmer
Friday, October 10, 1969	-	R. M. Yordy
Saturday, October 11, 1969	-	J. J. Roscoe, Sr.

3. This is a continuing claim made until the violation is corrected with the restoration of work to our craft. A joint check **of** Company records to be made to determine proper claimants and the amount due.

4. The Reading Company is required to pay J. Roscoe, R. K. Bartley and any other employees adversely affected, the difference of what they made and what they should have made if this arbitrary abolishment was not put into effect, plus all actual necessary expenses incurred by this abolishment, such as mileage, deadheading, and any other expenses.

OPINION OF BOARD: Carrier contends that as a result of a decrease in train movements during Midnight to 7:00 A.M., coupled with the fact Carrier initiated a Tracer System, there remained no work to be performed by a telegrapher at **Newberry** Junction. Consequently, Carrier notified the Organization that the third trick telegrapher position would be abolished on October 4, 1969.

It is the position of the Organization that it had agreed **with** Carrier to permit the abolishment of the third trick telegrapher's position at **Newberry** only with the understanding that all third trick clerical positions would be abolished concurrently. A third trick clerical position, however, remained at **Newberry** Junction. Carrier's action, the Organization feels, violated the Agreement reached at conference with Carrier on August 8 and 12, 1969 as well as the June 1, 1966 Agreement.

Carrier defends the abolishment on the basis that the work had diminished to a point which no longer justified retention of the telegrapher position. It cites section 4 of the June 1, 1966 Agreement to support its actions.

The issue for determination herein is whether Carrier agreed to abolish all clerical positions before abolishing the telegrapher position in question?

The Organization maintains that by Letter dated August 24, 1969 it confirmed the Agreement reached at conference with Carrier officers on August 8 and 12. The **letter** reads in pertinent part: "...On this basis I said that I would agree to the abolishment provided; 1 - That abolishment would take place after the clerical positions **were** abolished". In response thereto, on September 9, 1969, Carrier's Manager of Labor Relations wrote the Organization's General Chairman that "the Carrier will not effectuate the abolishment of the telegrapher's position at **Newberry** Junction presently held by Mr. J. T. **Roscoe** until such time as all clerical positions at this location **are abolished concurrently.**"

There is no question that had these letters constituted the entire understanding between the parties they would certainly sustain the **Organization's** position herein for this Board considers duly constituted letters of understanding between the parties as part of the collective bargaining **Agreement** and will give effect thereto. However, it is also a basic rule of contract construction that before an enforceable contract is entered into the parties must mutually assent to the terms thereof. It is **hornbook** law that if they fail to mutually agree on the **terms** of the contract, then no enforceable contract exists.

When Carrier's Manager of Labor Relations wrote on September 26, 1969 that, "In line with our previous understanding as outlined in my letter of September 9, 1969, this provides for the retention of the third trick telegrapher's position at Newberry Junction until such time as we discontinue the third trick clerical 1050 machine operator's position at that point," he indicated that he had not agreed to the terms the Organization understood to be in effect following the August 24 and September 9 exchange of letters. How this misunderstanding came about is of no concern to this Board. We conclude that mutual assent to the terms of the alleged contract being found wanting herein, no valid contract existed as the **Organization** contends. And finding no further bar to Carrier's actions, we find that the position in question was abolished pursuant to the June 1, 1966 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.