Award No. 731
Docket No. TE-662

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dozier A. De Vane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central System that:

"L. P. Kore regularly assigned to the position of Assistant Freight Agent at Paducah, Ky., was improperly removed from his position on or about August 18, 1937, and shall be restored to his regularly assigned position and retroactively compensated for any loss in wages he may have suffered by reason of having been improperly removed; and that all employees resultantly displaced by reason of the improper removal of Kore from his position shall be restored to their regularly assigned positions and retroactively compensated to the date of their displacement for any loss in wages they may have suffered by reason of such improper displacement."

JOINT STATEMENT OF FACTS: The parties jointly certified the following Statement of Facts:

"An agreement bearing date August 16, 1931, as to rates of pay, and November 1, 1931, as to rules of working conditions, is in effect between the parties to the dispute.

"The position of assistant freight agent at Paducah, Kentucky, was covered by the said agreement, and L. P. Kore was filling the position when it was abolished by the carrier on August 18, 1937. The work done by the employe filling the position of assistant freight agent prior to August 18, 1937, has been performed by the freight agent subsequent to that date. The position of freight agent at Paducah is not covered by the schedule agreement referred to above."

POSITION OF EMPLOYES: "The position of assistant freight agent at Paducah is covered by the prevailing telegraphers' agreement, and has been so incorporated in the agreement for more than nine years, and at a monthly rate of $217.50 plus an increase of $12.17 per month, effective August 1, 1937.

"The position existed prior to August 18, 1937, and the duties and responsibilities of the position supervisory under the jurisdiction of the freight agent. The position of freight agent is not covered by telegraphers' agreement, and the incumbent is not under the said agreement.

"On August 18, 1937, the carrier by ex parte action declared the position of assistant freight agent abolished, removed the incumbent Kore from the position to which he was regularly assigned and permitted him to exercise displacement rights on another position covered by telegraphers' agreement on which an employe under the agreement was regularly assigned, and permitted resultant displacements among employes thereby affected.

"The carrier upon declaring the position of assistant freight agent abolished on August 18, 1937, moved the office of the freight agent from the

we simply required the agent at Paducah to look after his station without an assistant agent, because he did not need any such assistance. There was nothing in the schedule agreement or elsewhere prohibiting the carrier from abolishing the position of assistant agent when assistance was no longer necessary to obtain efficient operation, and that position was abolished.

"This claim cannot be justified under provisions of the schedule agreement, by the facts and circumstances, in the case or on any other fair and reasonable basis, and we respectfully ask that it be denied."

OPINION OF BOARD: The position of Freight Agent at Paducah, Ky., and other of the larger stations along the line of the Illinois Central Railroad Company are not covered by the prevailing agreement in effect between the carrier and the Order of Railroad Telegraphers. Carrier states that it has been its policy for many years to employ Assistant Agents at some of the larger stations where, in its opinion, such positions are desirable and necessary. Pursuant to this policy carrier had employed an Assistant Freight Agent at Paducah for many years.

Prior to July 1, 1928, no Assistant Agents were covered by the Agreement between the parties. On that date the Assistant Freight Agent at Paducah was placed under the Agreement. According to the record in this case no other Assistant Agent has been placed under the Agreement. On August 18, 1937, the carrier, by ex parte action, declared the position of Assistant Freight Agent at Paducah abolished and removed the incumbent, L. P. Kore from the position to which he had been regularly assigned.

The General Committee contends that the work performed by the Assistant Freight Agent was not discontinued when the position was abolished, but only transferred to another employe not under the Agreement and in contravention of the Agreement. In support of its contention the Committee cites many awards wherein it has been held that a position covered by an agreement with a carrier cannot be abolished and the work transferred to another employe not under the Agreement (See Awards 94, 180, 233, 234, 231, 248, 255, 360, 458, 607, and 630).

The carrier contends there is no provision in the Schedule Agreement, or any other understanding with the Order of Railroad Telegraphers obligating the carrier to continue positions in effect which are unnecessary and that this claim cannot be justified under the provisions of the Schedule Agreement.

This controversy arises out of the effort of the carrier to reduce expenses. Carrier claims that the position was abolished because the employe was no longer needed due to the greatly decreased business at the station in question. In support of this the carrier offered an exhibit showing the extent to which business had fallen off at Paducah.

To meet this, the Committee points out that the low point in business handled at Paducah was reached in 1932 and that there has been a steady increase in revenues at this station since that year.

This is all beside the point. The question before the Board is not whether the carrier's action was justified on business grounds, but whether the Agreement permitted it. In numerous cases this Board has held that a carrier has the absolute right to abolish any position in an Agreement, provided the duties of the position are in fact abolished. In an equally long line of cases this Board has held that the carrier does not have the right, under the guise of abolishing a position, to transfer the duties of the position to someone else not under the agreement. (See Award 255 and cases therein cited).

This case presents a somewhat different question to the one presented in Award 255 and similar cases decided by this Board. In that and other like cases carrier had attempted to abolish agents, etc. covered by the Agreement

and to place the station in charge of a Resident Agent or caretaker not covered by the Agreement. This Board has consistently held that such action was a violation of the Agreement.

In the instant case the position in question was that of Assistant Freight Agent. The duties of such position are just what the words imply—to assist the Agent. The Agent not being under the Agreement, an anonymous situation was created when the Assistant Agent was placed under the Agreement. It is therefore necessary to look to past practices to ascertain the intent of the parties.

As heretofore pointed out all stations of the carrier are not included in the Agreement. The Board cannot be charged with indulging in speculation when it assumes that the question of which stations shall be excluded is always a matter of controversy between the parties. It is only natural that this would be so, and based upon this experience and past practices of the parties, carrier must have known full well that when the position of Assistant Freight Agent at Paducah was created under the Agreement, it could not be abolished and the duties transferred to someone not covered by the Agreement, as long as the Agency at Paducah is maintained. It should not be overlooked that the Agreement **created** a new position under the Agreement. Had the Agent at Paducah been included under the Agreement, there is no question that it would be a violation of the Agreement to abolish that position and transfer his duties to someone not covered by the Agreement. No one has contended here that the duties of the Agent at Paducah have been abolished.

The position of Assistant Freight Agent attached to the agency at Paducah. The position having been incorporated in the Agreement, became just as permanent as that of Agent would have become had it been incorporated therein and cannot be abolished as long as the agency is maintained, except as provided by Article 24, Rule 60 of the Agreement, or by mutual agreement of the parties.

This constitutes no hardship on the carrier in its effort to effect economies. It simply means that desired economies cannot be effected at the expense of the employe holding a position covered by the Agreement by transferring the work done by him to someone not under the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 action of the Carrier in the instant case contravened the terms of the existing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1938.