

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND & PACIFIC
THE CHICAGO, ROCK ISLAND & GULF RYS.**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway, that the carrier has violated its Agreement with its telegraphers by declaring abolished the agency at Havelock, Nebraska (a position incorporated in said Agreement) and transferring the duties of that position to the jurisdiction of the agent at Lincoln, Nebraska (a position not covered by the Telegraphers' Agreement); has further violated, and continues to violate, said Agreement by permitting communications of record originating at, or destined to, Havelock to be regularly handled by various of its employes not covered by the Telegraphers' Agreement and by employes of the Aden Grain Company located at Havelock; that a position of agent-telegrapher at Havelock shall be bulletined and filled in accordance with the provisions of said Telegraphers' Agreement."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers and the Chicago, Rock Island and Pacific Railway Company have an Agreement covering wages and working conditions dated January 1, 1928, copies of which have been furnished to the Board, in the wage scale of which is shown the agent-telegraph position of Havelock, Nebraska, on page 34, rate of pay 66¢ per hour. By negotiation and Agreement this position was reclassified June 1, 1932, to that of small star non-telegraph agency at a rate of 48¢ per hour. Through an application to the Nebraska State Railway Commission, application No. A-12080, the Carrier secured authority to discontinue the station agent's position and substitute therefor the so-called custodian service. And the jurisdiction of Havelock station and handling of accounts assigned to the agent at Lincoln, Nebraska, a position not incorporated in the Telegraphers' Agreement."

POSITION OF EMPLOYES: "The General Committee of the Order of Railroad Telegraphers contends that the position of non-telegraph agent at Havelock, Nebraska, was not abolished in fact, but the duties were merely transferred from the jurisdiction of the Telegraphers' Agreement to the authority of the agent at Lincoln, which position is not incorporated in the Telegraphers Agreement, in violation of the scope rule and Article 23, and an outsider, the owner and/or an employe of the Aden Grain Company of Havelock placed in charge of the station, at a stipulated rate of \$25.00 per month, as called for by the authority of the Nebraska Railroad Commission in the decree of that body granting the discontinuance of the agency job.

"The Telegraphers' Committee further contends that the custodian is performing telegraph-telephone work, in that he uses the telephone each day for the purpose of ordering cars, giving information on shipments and furnishes

OPINION OF BOARD: Under authority granted by the Nebraska State Railway Commission the carrier abolished the non-telegraph agency at Havelock, a part of the City of Lincoln, Neb. The employes contend that the duties of this agency have been simply transferred, and that the agency has not been abolished in fact.

With the abolition of this agency at Havelock both passenger and freight service were abolished at this point. This fact we think distinguished this claim from the claims involved in such awards as 231, 564, and 1061. With the abolition of this service, the work of an agent at Havelock disappeared. True, the territory formerly served through the Havelock agency is now served through Lincoln, but, nevertheless, there is no work left for an agent at Havelock, all service at that point having been discontinued. We are of the opinion that this phase of the case comes within the well established rule of this Board that the carriers have the right to abolish positions included in agreements when there is no longer work to be performed in these positions.

The claimants contend that the custodian placed in charge of the Havelock station is performing telephone-telegraph work. The facts disclose that the Aden Grain Company is located at Havelock and that Mr. Aden of this company was named custodian of this station. Mr. Aden uses the telephone to order cars from the agent at Lincoln for use in his grain business. The dispute arises over the question of whether Mr. Aden orders these cars for himself as an individual, or whether he orders them in his capacity as custodian of the Havelock station. Following the hearing on this Docket the parties were requested to furnish a joint statement relating to the duties of the custodian at Havelock. This joint statement was furnished and from this it quite definitely appears that Mr. Aden conducts his business over his personal phone with the agent at Lincoln in the same manner as any other shipper having business with that agent, and that he has never ordered any cars or conducted any business with the agent at Lincoln except for himself. From this joint statement and other facts disclosed in the record the Board must find that Mr. Aden in the acts complained of was acting in his personal capacity and not as an employe of the carrier.

Claimants further contend that "the section foreman uses the telephone at Havelock to secure train line-ups and handle other matter with the operator at Lincoln." However, it here appears as it did in Award 1145 that the information was obtained by the section foreman for his own use "from telegraph operators employed under the prevailing schedule of rules." Award 1145 must govern this contention.

On October 10, 1939 a train conductor took a train order at Havelock directly from the train dispatcher at Lincoln. This was a violation of the existing agreement and the senior, extra, idle employe on that date should be compensated the same as though he had performed the work—Award 1220. However, this isolated incident is not sufficient upon which to allow this claim to reestablish this full time position.

We are of the opinion that for all intents and purposes Havelock has been discontinued as a station and agency, and that it has not been shown that the work of an agent-telegrapher is being performed at this prior agency.

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 evidence of record discloses no violation of the existing agreement, with the exception of the train conductor on October 10, 1939 taking a train order from dispatcher at Lincoln. Compensation for this violation should be made as suggested in the Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1940.