

Award No. 2425

Docket No. TE-2428

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that the Carrier violated the Telegraphers' Agreement, Part 2, when it arbitrarily removed from the Schedule of the Agreement the first and second trick telegrapher positions at "GO" North Philadelphia Passenger Station with a rate of \$.7525 per hour and turned the work of these positions over to employees not covered by the Telegraphers' Agreement. Claim is made that said positions, first and second trick telegraphers shall be restored to the Schedule of the Telegraphers' Agreement, Part 2, the regularly assigned employees restored to their respective assigned positions, as well as other employees improperly displaced in the exercise of seniority, and all of them compensated for such losses as were suffered by reason of this improper abolishment.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 16, 1938, there was contained in and a part of the Schedule of Agreement on the Philadelphia Terminal Division, positions of telegrapher on first and second trick, designated as "GO" Telegraph Office, North Philadelphia Passenger Station, paying a rate of pay of \$.7525 an hour, with positions manned by telegraphers from the Philadelphia Terminal Division roster.

Effective August 16, 1938, the Carrier removed the telegraphers from "GO" Telegraph Office, and thereafter turned the office and work over to the Western Union Telegraph and Cable Company, who then assigned Western Union telegraphers to man the positions.

POSITION OF EMPLOYEES: An Agreement bearing date of December 1, 1927 as to Rules and March 1, 1929 as to Rates of Pay (except as otherwise partly revised September 30, 1936 and May 1, 1938), is in effect between the parties to this dispute.

The Scope of said Agreement covers the following classifications:

Schedule of Regulations and Rates of Pay for the Government of:

Part 1.

Station Agents and Assistant Agents.

is received is specifically outlawed. Under this Regulation, clearly intended by the parties to eliminate delay in the handling of claims for compensation and the resulting accumulation of such claims, the instant claim, presented on March 24, 1942, cannot be entertained or allowed insofar as it attempts to relate back to August 16, 1938.

In accordance with Regulation 4-N-1 the claims for compensation herein cannot relate back so as to correct the alleged shortage of any pay check received prior to February 23, 1942. Therefore, even if the Claimants were entitled to the compensation claimed under the express provisions of the Agreement the most they could recover would be the difference between what they actually received in their pay checks issued on or after February 23, 1942, and the amount they would have received in such checks if they had retained their former positions.

III. Under the Railway Labor Act, The National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

In the light of the foregoing it is respectfully submitted that when the positions of Telegrapher, first and second trick at "GO" North Philadelphia Passenger Station, were abolished there was no violation of the applicable Agreement and consequently the unnamed Claimants who apparently were displaced by that action are not entitled to be restored to their former positions or to be compensated for any losses suffered by virtue of their displacements.

OPINION OF BOARD: The record shows that in 1917 a contract was made between the Carrier and the Western Union Company by which the former was to handle Western Union messages at large stations including the one in question, subject to the Western Union Company's right to resume the handling thereof by its own employees by taking over and paying for the use of the space and facilities theretofore used for the purpose by the Carrier. To handle this Western Union work the Carrier employed telegraphers who became covered by the Telegraphers' Agreements subsequently made.

The Western Union has now resumed its handling of its own business at the station. The work, which for over twenty-one years the Carrier had obtained for its telegraphers by agreement with the Western Union Company, has therefore come to an end and the two telegraphers' positions concerned have been eliminated. The claim is that by permitting the change the Carrier has arbitrarily removed the positions from the Telegraphers' Agreement and has turned the work over to persons not covered by the Agreement.

It seems to be admitted that the Western Union Company has the right to resume the direct conduct of its own business and that, if it does so off railroad premises, the Carrier will not be at fault; but the contention seems to be that, because under the 1917 Agreement with the Carrier the Western Union Company is permitted to conduct its business at the railroad station, the situation is otherwise.

Whether the Telegraph Company conducts its business on railroad property or elsewhere, it is no less the Telegraph Company's business and not that of the Carrier. There can be no doubt that the Carrier had the right to make jobs for its own employes and revenue for itself by contracting to handle the Western Union business and that it had the right by the same contract or otherwise to make revenue for itself by providing for leasing its facilities to the Telegraph Company in the event the latter should resume the handling of its own work; that provision does not alter the obvious fact that but for the Western Union contract the telegraphers' work would never have existed so far as the Carrier and the Organization were concerned, that upon its termination the work no longer exists for them, that the Carrier has not arbitrarily or otherwise removed work from the Agreement, and that the claim must be denied.

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 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.