

Award No. 3460

Docket No. TE-3376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD COMPANY

(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo:

1. That the Carrier violated the terms of the Telegraphers' Agreement, when on November 15, 1944, it arbitrarily removed the position and all of the work of the position of agent-telephoner at Walkerton, Indiana, from the New York Central Telegraphers' Agreement and from the employees under said agreement and transferred the position and all of the work thereof to the Baltimore & Ohio Railroad Company for operation by its employees;

2. That the position and all of the work of the position of agent-telephoner at Walkerton, Indiana, shall be restored to the Telegraphers' Agreement with the defendant Carrier and bulletined and filled in accordance with the rules of its Agreement with its Telegraphers; and

3. That the senior extra employee or employees entitled to perform the work of this position who have suffered or shall suffer a loss in wages and commissions as a result of being thus deprived of this work by this improper action of the Carrier since November 15, 1944, and until the vacancy on the position is regularly filled, shall be reimbursed in full for the wage and commissions loss suffered thereby.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date February 1, 1943, as to rules of working conditions, and December 27, 1943, as to rates of pay, is in effect between the parties to this dispute.

The position of agent at Walkerton, Ind.,—the position here in dispute—is located on the Kankakee sub-division of the western division, and is covered by the aforesaid Telegraphers' Agreement, and has been so covered continuously since July 1, 1912.

Effective May 1, 1928, by means of a contract between the New York Central Railroad Company and the Baltimore & Ohio Railroad Company to which the telegraphers' committee was not a party or consulted, the agent position at Walkerton, Ind., was made a joint agent for the Baltimore & Ohio Railroad Company under the management, control and operation of the New York Central Railroad Company. In the execution of this bi-party contract between the carriers no change was negotiated by the New York Central

2. The alleged rights claimed by the New York Central Telegraphers' Committee have been non-existent since May 1, 1928.
3. The employees cite no rule as having been violated and can quote no rule in support of the claim.
4. The carrier's position is supported by common sense consideration of the equities of the situation.
5. The claim is not supported by any agreement rule or by any law or practice in effect, is without merit and should be dismissed, and if not dismissed should be denied.

OPINION OF BOARD: The record shows that on May 1, 1928, the New York Central Railroad Company negotiated a contract with the Baltimore and Ohio Railroad, whereby the two carriers agreed to consolidate station facilities and forces at Walkerton, Indiana. As a result of this contract, three trick operators, employees of the New York Central were replaced by the same number of operators from the Baltimore and Ohio. The agent's position was given to the New York Central agent, and he became the joint agent of the two carriers and was carried on the New York Central pay roll until his death, which occurred November 11, 1944, at which time the agent's position became vacant and on November 15, 1944, this position was given to a Baltimore and Ohio employee. The contract made provision for the retention of the New York Central agent, under certain circumstances, with the understanding that upon termination of the employment, the agent's position should be allocated to the Baltimore and Ohio. This required the Baltimore and Ohio to discontinue one agent's position May 6, 1928. The pro rata share of expenses between the two carriers incident to the consolidation is 70% for the Baltimore and Ohio and 30% for the New York Central. The employees do not question the right of the two carriers to consolidate their facilities to bring about economy, but assert that they are not parties to the contract, were not consulted with reference to it and had no knowledge of its contents insofar as the contract would affect the rights of the employees, until the death of the New York Central agent and the taking over of the agent's position by the Baltimore and Ohio; that 30% of the work still belongs to the New York Central employees under the contract of the two carriers. Had the four positions belonging to the New York Central been removed May 1, 1928, the contract would have been violated; to remove the agent's position at this time constitutes a violation. The agent's position at Walkerton, Indiana, was originally located on the Chicago, Indiana and Southern Railroad and was incorporated into the Telegraphers' Agreement with that carrier effective July 1, 1912, which railroad was consolidated with the New York Central Railroad Company on April 29, 1914; at this time the force of employees was as heretofore stated and remained so until May 1, 1928. The New York Central Agreement, effective May 1, 1926, shows at Walkerton, an agent's position and three trick telegraphers' positions. The Telegraphers' Agreement with the New York Central, effective May 16, 1928, sixteen days subsequent to the contract of consolidation of May 1, 1928, listed only the agent's position at Walkerton and the hourly rate of pay for that position. There appears in the record wage sheets, which the Carrier states were presented by the employees. The matter of wages was taken up in conference in Cleveland, Ohio, May 14, 1928. At this meeting the General Chairman representing the employees was noted as being present and the Local Chairman, representing the employees in the territory of which Walkerton is a part, was also noted as being present.

In this connection Carrier's Exhibit (two) shows sheet listing positions with reference to Walkerton. The Exhibit shows Walkerton (changed to B and O, 5/1/28). The Local Chairman denies he inserted the words (changed to B and O, 5/1/28) and denies any knowledge of the intention or desire of the Carrier to transfer the agent's position to the Baltimore and Ohio until the transfer became a fact commencing November 13, 1944 and ending November 15, 1944. It is not denied that the applicable agreement between the parties, effective February 1, 1943, lists the position of agent at Walkerton.

It is significant to note that at no time since the joint contract of the New York Central and the Baltimore and Ohio was consummated, has the General Chairman of the Employees protested the removal of the three trick telegrapher employees of the New York Central, who replaced other employees on the system, but accepted such situation, and in the light of subsequent agreements between the parties where the three trick telegrapher positions were eliminated, must have concurred in the action of the two carriers in such respect. While there is a conflict in the record as to the knowledge the employees had with reference to the agent's position, we believe the evidence is in preponderance that the Employees had knowledge that the agent's position under the joint contract of May 1, 1928 was in fact a Baltimore and Ohio position, subject to certain conditions. A period of 16 years elapsed before any protest was made by the Employees and then the protest was confined to the agent's position.

In the light of the record, we believe the language taken from the following awards applies:

"The practice complained of is one of long standing. During its continuance there have been revisions of the contract, without correction, if correction be needed, of this practice. That is persuasive that, for eleven years or more, the employees themselves have not regarded it as a violation of their contract." Award 1397.

"In this connection we might add that the practice of which the present claim forms a part antedates by many years the presentation of any complaint or any contention that such practice constitutes a violation of the agreement." Award 1320.

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 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1947.