

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawana and Western Railroad Company that:

1. The carrier violated and continues to violate the provisions of the telegraphers' agreement when and because on November 25, 1947, and since, it declined and continues to decline to advertise the Third Ticket Agent position, Hoboken, N. J., to employees covered by the telegraphers' agreement,
2. The carrier shall be required to advertise said Third Ticket Agent position to employees covered by the telegraphers' agreement in accordance with appropriate provisions thereof,
3. The senior idle extra employee shall be allowed a day's pay at the rate of the Third Ticket Agent position each day November 25, 1947 through December 24, 1947,
4. The employee who is finally assigned to the Third Ticket Agent position, pursuant to Item 2 above, shall be paid what he would have earned had he occupied the position December 25, 1947, and forward until placed thereon, plus the provisions of Article 15 of the telegraphers' agreement, less the wages currently paid, and
5. Other employees who have been denied the right to occupy the vacancies which would have been in evidence following the proper advertising and filling of the Third Ticket Agent position shall be paid what they would have earned had they been permitted to occupy said vacancies plus the provisions of Article 15 of the telegraphers' agreement, less the wages currently paid.

EMPLOYEES' STATEMENT OF FACTS: Agreements by and between the parties bearing effective dates of May 1, 1940 and November 1, 1947 are in evidence; copies thereof are on file with the National Railroad Adjustment Board.

As a result of negotiations, and effective June 1, 1938, the Assistant Ticket Agent position and the Third Ticket Agent position, Hoboken, were brought into the Telegraphers' Agreement. The May 1, 1940 Telegraphers' Agreement lists these positions at page 13. The incumbents of the positions

A list of positions which the Carrier submitted to The Order of Railroad Telegraphers was in accordance with Article 8(c) of the Memorandum of Agreement of September 19, 1948, but has not been accepted by the Telegraphers.

The Carrier contends that it rightfully placed on the Night Ticket Agent's position, Hoboken, N. J., a clerical employe on November 25, 1947, because of the ruling in Third Division Award No. 3526, in which the Board ruled on a position of Assistant Agent at Wayland, N. Y., the position of Assistant Agent, Wayland, N. Y. having been removed from the Clerks' Agreement without negotiation. The circumstances in the Wayland case do not differ in any respect from the case in question. The Night Ticket Agent, Hoboken, N.J., was erroneously placed in the Telegraphers' Schedule in June 1938. However, the position was a clerical position and was purportedly placed in the Telegraphers' Schedule without negotiation with the Clerks' Organization.

Furthermore, the Carrier contends that since it was not agreed to place the position of "Night Ticket Agent" in the Telegraphers' Schedule of November 1, 1947, the National Railroad Adjustment Board is without authority to turn over this clerical position to The Order of Railroad Telegraphers without giving the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on this property an opportunity to express its position in respect to the Night Ticket Agent's position at Hoboken, N. J.

The Carrier is agreeable to abide by the decision of the National Railroad Adjustment Board with respect to the ownership of the position of Night Ticket Agent, Hoboken, N. J., but contends that any monetary claims involving this position must be waived and that both organizations are not entitled to the same job.

Exhibits not reproduced.

OPINION OF BOARD: The record discloses that on June 1, 1938, the position of Third Ticket Agent at Hoboken, New Jersey, was brought under the Telegraphers' Agreement. The agreement of May 1, 1940, lists the position specifically as being in the Telegraphers' Agreement of that date. At the time the Third Ticket Agent position was brought into the Telegraphers' Agreement it was occupied by one James Billington, an employee within the Clerks' Agreement. It was agreed, however, that the position would not be filled by a telegrapher until it was vacated by the incumbent Billington. It is shown, however, that the telegraphers' organization progressed a claim to this Board demanding that Billington be given a seniority date under the Telegraphers' Agreement. Billington was given a seniority date of June 7, 1938, under the Telegraphers' Agreement, as a result of the award entered in the foregoing case. See Award 3601. Pursuant to the seniority thus established, Billington bid in a position in the Newark Agency and the position of Third Ticket Agent became vacant.

The record further shows that in 1939 the Carrier negotiated an agreement with the Clerks' Organization in which the position of Third Ticket Agent at Hoboken was included as an excepted position. When Billington vacated the position on November 25, 1947, the Carrier filled the position with an employee not subject to the Telegraphers' Agreement. It is clear therefore that the Carrier had negotiated the position of Third Ticket Agent, Hoboken, New Jersey, into the Telegraphers' and the Clerks' Agreements. If this situation continued to exist the Carrier would be obligated to the senior employee qualified for the position under each of the two agreements. Award 3526.

On May 20, 1944, the Carrier served notice on the Telegraphers' Organization of its desire to revise the Telegraphers' Agreement of May 1, 1940, and proposed specifically that the position of Third Ticket Agent at Hoboken be not included in the revised agreement. The Organization did not agree and the services of the Mediation Board were invoked.

On September 19, 1947, a memorandum agreement was signed wherein it was agreed that "with regard to other than agency positions * * * the railroad agrees that prior to January 1, 1948, it will check the work being performed for the purpose of conforming to the classifications of the new scope rule; * * *."

Sec. 8(c), Memorandum Agreement of September 19, 1947. It appears from the record that the Carrier complied with Sec. 8(c) and that the Organization did not accept it.

It is evident that the position of Third Ticket Agent at Hoboken had been negotiated into both the Clerks' and Telegraphers' Agreement when notice was served on the Organization by the Carrier of its desire to negotiate a new agreement, particularly to remove this position and others from the Telegraphers' Agreement. This was done pursuant to Title I, Section 5, Railway Labor Act. It is clear from this record that the National Mediation Board adjusted the differences between the parties as shown by a Mediation Agreement with a Memorandum Agreement attached, bearing date of September 19, 1947. Thirty days having expired since the Mediation Agreement was reached, the new agreement must include the questioned position within the Telegraphers' Agreement or there is no agreement with the Telegraphers in effect covering the position of Third Ticket Agent at Hoboken. See Title I, Section 5, Railway Labor Act. Section 8(c) of the Memorandum Agreement of September 19, 1947, applies to the questioned position. The Carrier complied with Section 8(c) and did not include the questioned position within the Telegraphers' Agreement. Up to this point in the proceedings the position of Third Ticket Agent at Hoboken was not within the Telegraphers' Agreement.

The Organization did not accept the findings of the Carrier made in compliance with Section 8(c) and requested an interpretation of Section 8(c) as provided in Title I, Section 5, Railway Labor Act. This interpretation had not been made at the time of the submission of the present dispute. Consequently, the position of Third Ticket Agent at Hoboken is not presently with the Telegraphers' Agreement. We cannot, of course, anticipate the interpretation which the Mediation Board may give to Section 8(c), but on the record now before us we can only hold that the Organization has failed to prove that the questioned position is within any existing Agreement with the Telegraphers.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1949.