

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

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

(a) the Carrier violated the terms of the Telegraphers' Agreement when on June 14, 1947, it notified and required H. J. Last, regularly assigned Assistant Agent, Perkinsville, to vacate said assistant agent position at the close of business June 15, 1947;

(b) H. J. Last shall be returned to said assistant agent position and paid for any and all wage loss, plus the provisions of Rule 15-(a); and

(c) any and all employees adversely affected (in the exercise of seniority) resulting from the Carrier's improper act shall be returned to their former positions and paid for any and all wage loss, plus the provisions of Rule 15-(a).

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date of May 1, 1940 is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement dating back to and including 1919 lists the agency at Perkinsville (Portway) in this manner:

<u>Agreement Date</u>	<u>Location</u>	<u>Classification</u>	<u>Rate of Pay</u>
May 1, 1919	Portway	Agent	.50 per hour
January 1, 1923	Portway	Agent-Operator	.54 per hour
February 15, 1924	Portway	Agent-Operator	.56½ per hour
March 1, 1926	Portway	Agent-Operator	.56½ per hour
January 1, 1927	Portway	Agent-Operator	.59½ per hour
January 1, 1929	Portway	Agent-Operator	.62½ per hour
May 1, 1940	Perkinsville	Asst. Agent	\$4.71 per day

Effective July 1, 1932, pursuant to authority from the New York State Public Service Commission, the Carrier declared the agency position at Perkinsville (the Portway) abolished. The agency duties at Perkinsville not having been abolished in fact, since the Carrier required a clerk at Wayland to proceed to Perkinsville daily to perform the remaining agency duties, the

the Board in Docket Number CL-3526 made clear that whatever work remained was purely clerical work and belong to Clerks.

The claim should be denied in all respects.

OPINION OF BOARD: On July 1, 1932, the Carrier abolished the position of Agent at Perkinsville, New York, closed the agency and transferred its accounts to the station at Wayland. It appears that the Carrier thereafter directed a clerk to go to Perkinsville each day to perform the remaining work. The clerk (Hart) later bid in a senior clerk's position at Wayland. The position occupied by Hart was advertised to the Telegraphers and bid in by claimant, an employe within that craft. On June 14, 1947, claimant was required to vacate the position and it was assigned to one not under the Telegraphers' Agreement. The Organization contends that this was a violation of the Telegraphers' Agreement.

The record shows that Perkinsville was a one-man agency prior to its abolition. The agent's position was within the scope of the Telegraphers' Agreement. When the agent's position was abolished there was no telegrapher's work remaining. The remaining duties were assigned to a clerk. Our Award No. 3526 holds that the work in question was properly assigned to a clerk. In 1939, during negotiations leading to a revision of the Telegraphers' Agreement, the Telegraphers claimed the work. The Carrier consented to the change of the name of the position to Assistant Agent, placed it under the Telegrapher's Agreement, and entered into an understanding that the position would not be bulletined to the Telegraphers until the then occupant (Hart) vacated the same. When Hart vacated the position on January 9, 1945, the Carrier bulletined the position to the Telegraphers. The clerks contended that the work of the position was within the Clerks' Agreement. This Board held that the work was within the Clerks' Agreement, that it was in fact clerk's work, and sustained the claim. Award 3526.

While Award 3526 does hold that the work of the position was clerk's work falling within the Clerks' Agreement, it does not hold that the position is not within the Telegraphers' Agreement, nor does the award purport to eliminate the position from the Telegraphers' Agreement. This Board does not have the power to thus rewrite collective agreements and where, as here, the Carrier has placed the work of a position under two agreements, the remedy is not within the jurisdiction of this Board. It can be remedied by negotiation and, in case of failure by this means, by mediation in accordance with Title I, Section 5, Railway Labor Act. A failure to mediate the dispute in accordance with the aforesaid Section 5, if followed by the lapsation of 30 days, has the effect of nullifying the contractual provision in dispute. See Title I, Section 6, Railway Labor Act.

It cannot be denied that the position was negotiated into the Telegraphers' Agreement in 1939. Unless the position has subsequently been eliminated from the Telegraphers' Agreement by negotiation or mediation in the manner provided in the Railway Labor Act, the Carrier has simply contracted with two Organizations for the performance of the same work. Until it secures a revision of the agreement provision involved, the Carrier will be required to meet its obligations under both contracts.

The only question remaining, therefore, is whether the position of Assistant Agent has been negotiated out of the Telegraphers' Agreement. The Organization has not consented to its removal and the file reveals that the parties are still in dispute as to its inclusion in the agreement of November 1, 1947. The record does not reveal that the controlling provision of the agreement has been nullified in accordance with Rule 29, Current Agreement, and Title I, Section 6, Railway Labor Act. Such being the case, the agreement will be enforced until such time as the contract is changed by agreement or in the manner provided by law.

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 violated.

AWARD

Claim (a) sustained. Claim (b) sustained as to all wages lost. Claim (c) 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.