

Award No. 4735  
Docket No. TE-4540

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Mortimer Stone, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines.

(1) That the Carrier violated and continues to violate the terms of the Telegraphers' Agreement when on August 25, 1948, it declared the position of Telegrapher-Cashier at Lockhart, Texas, abolished and transferred the work of the position to an employe not under the Telegraphers' Agreement.

(2) That the position of Telegrapher-Cashier shall be restored to the Telegraphers' Agreement and the former incumbent of that position restored thereto and compensated for any loss of wages and expenses incurred by reason of the violative act of the Carrier; and

(3) That all other employes under the Telegraphers' Agreement improperly displaced from their positions as a result of this violative act of the Carrier shall be restored to their former positions and compensated for any loss of wages and expenses incurred thereby.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing date January 1, 1899, revised August 1, 1904; January 1, 1914; October 1, 1916; October 1, 1918; March 16, 1922; November 1, 1924; January 1, 1927; August 1, 1928; and September 1, 1947, in effect between the parties to this dispute.

The position of Cashier-Telegrapher at Lockhart, Texas, was negotiated into the agreement October 1, 1916, and has been continuously in effect and covered by the Telegraphers' Agreement since that date in each and every agreement.

On August 25, 1948, the carrier abolished the position of Cashier-Telegrapher by wire to the incumbent R. A. Boiles and issued bulletin No. 203 under date of August 14, 1948, reading as follows:

"Circular No. 203.  
Smithville, Texas, August 14, 1948  
458-234

All Clerks:

Vacancy exists for position of General Clerk, Lockhart, Texas, Assignment 8:00 A. M. to 5:00 P. M., with one hour off for lunch, six (6) days per week. Rate of pay \$9.14 per day.

act of the Carrier shall be restored to their former positions and compensated for any loss of wages and expenses incurred thereby."

As no agreement violation as alleged in Claim (1) by the Petitioner has been definitely established for reasons shown by the Carrier in this submission, and as the Petitioner has not shown in either Claim (3), quoted above, or in the exchange of correspondence on the property in handling this case with the Carrier, that any employees under the Telegraphers' agreement have been improperly displaced from their positions, alleged by the Petitioner, and that any loss of wages and expenses was incurred by them, as well as the specific agreement rules and particular provisions of those rules that support any such claim, it is definitely clear no employees under the Telegraphers' agreement have been improperly displaced and sustained any loss of wages or incurred any expense as alleged by the Petitioner in Claim (3), and that this claim is without agreement support and has not been handled by the Petitioner with the Carrier in accordance with the provisions of the amended Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board, issued October 10, 1934.

Petitioner alleges in fourth paragraph of his letter of September 9, 1948, Carrier's Exhibit "A", attached, as follows:

"We respectfully protest against abolishing our positions, which is covered by the Telegraphers' Agreement on pages 49, 57 and 59, as the Board has held in many awards that work assigned to any one craft could not legally be taken away from this craft and assigned to another craft, which was done in each of these three cases."

The Carrier denies that any work assigned to the class or craft of Telegraphers was taken away from that craft and assigned to another craft as alleged by the Petitioner, and submits that the action of the Carrier in this case was in compliance with Order and Award No. 3933 of the Third Division. The Carrier also denies that any position covered by the Telegraphers' agreement on this property is "frozen" or "pegged" by that agreement, as alleged by the Petitioner, as evidenced by the provisions of Rule 3 and Rule 6 (b), authorizing and providing for reduction in force and consolidation of positions, and the following definite and specific provision preceding the list, beginning on page 42 in the back of the Agreement, showing location and rate of pay of various classifications:

"The following list of current positions is prepared for no other purpose than to indicate the rate to be paid an employe when any of these positions are in effect:"

It will be noted this list is not a list of positions, but is simply a list of classifications of positions, as it does not show more than one classification of the same kind at any point and more than one position of the same classification is employed at various points.

The facts and evidence in this case therefore refute the claim and contentions of the Petitioner that the Carrier violated and continues to violate the terms of the Telegraphers' agreement, as alleged by the Petitioner, but on the contrary definitely and unmistakably show that the Carrier has not violated or continued to violate that Agreement, and that the action of the Carrier is in accordance with the Findings and Award of the Third Division, National Railroad Adjustment Board in Order and Award No. 3933.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Formerly Carrier maintained at Lockhart, Texas, an agent telegrapher and a cashier telegrapher whose work had been continu-

ously covered by the Telegraphers' Agreement for many years. On August 25, 1948, Carrier abolished the position of cashier telegrapher, created a new position under the title of general clerk, outside the Telegraphers' Agreement, and divided the work formerly assigned to the abolished position between the agent telegrapher and the newly created general clerk, giving to the former the telegraphic work and to the latter the cashier work. The reason for this change was not any change in the amount or nature of the work to be performed. It resulted from Award No. 3933 of this Division entered upon claim of the Clerks' Organization. The situation and rights of the parties are in essential respects the same as those determined by Award No. 4734 of this Division, and for reasons therein stated this claim must be sustained.

**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 parties waived oral hearing thereon;

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 the Carrier violated the Agreement as stated in the claim.

#### AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1950.