Award No. 6468

Docket No. TE-6275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that:

(A) The Carrier violated the rules of the effective agreement between the parties when on January 2, 1952, acting alone, it declared two operator-switchtender positions abolished at Hampton, New Jersey and consolidated said positions with the agent-operator position at the depot requiring the occupant of the agent-operator position to suspend work on his regular position and divide his time between the agency station and the distant telegraph office where the operator switchtenders were formerly located; and

(B) The Carrier is unjustified in requiring the agent-operator at Hampton to regularly perform ten (10) hours' service within a period of fifteen (15) hours and thirty (30) minutes Monday through Friday; and ten (10) hours' service within a period of sixteen (16) hours each Saturday, as well as being required to work two (2) hours in the morning and two (2) hours and forty-five (45) minutes in the evening each Sunday and holiday; and

(C) The employes, including the regular assigned rest day cycle relief employes, who were improperly removed from their assignments at Hampton telegraph switchtender office and all other employes resultantly displaced from their assignments, shall be restored thereto and be compensated in full in accordance with the provisions of Article 22 for each day beginning with the date their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until they are restored to their respective assignments; and

(D) All other employes who were deprived of work as a result of this violative act shall be paid for all wages lost.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective June 15, 1944, amended September 1, 1949, is in evidence hereinafter referred to as the Telegraphers' Agreement.

the same station limits. No contention is made that the work of an agent or telegrapher must be confined to the depot or other building where located. The fact that such is not the case is a matter of general knowledge.

"The duties of towermen were always extremely light at Worland. Generally throughout the period the position was in existence, the Missouri Pacific operated one train daily in each direction. The tracks of the Kansas City Southern are kept open except when this train of the Missouri Pacific is passing over the intersection. The work of the position consisted in letting these trains through. Carrier had the right under the agreement to consolidate this work with other work covered by the agreement and assign the work to employes qualified under the agreement to perform same and such other work. The claim will be denied."

As no rule of the ORT Agreement has been violated, this claim should be denied in its entirety.

The Carrier affirmatively states all data contained herein has been presented to the employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 1, 1952, three employes under the Scope of The Order of Railroad Telegraphers' Agreement were employed at Hampton, New Jersey; an agent-operator with a tour of duty from 6:20 A. M. to 3:20 P. M. with an hour for lunch; operator-switchtender, 3:00 P. M. to 11:00 P. M. and operator-switchtender from 11:00 P. M. to 7:00 A. M. On the above date the Carrier abolished the two operator-switchtender positions by changing the hours of that assignment to 5:00 A. M. to 2:00 P. M. and a two-hour call in the evening as well as doing agency work at the station. On Sundays and holidays the agent was called for two hours in the morning and two hours and forty-five minutes in the evening. The purpose of consolidation in this case was to effect economies. For additional facts, see Award No. 5357. It also appears that the same number of trains are operated in and out of Hampton Yard with the exception of one round trip train which was discontinued April 27, 1952, as were involved in Award 5357.

It is the position of the Carrier that:

"There is no rule of the O.R.T. Agreement nor any interpretation of any scope rule similar to that in this O.R.T. Agreement which prohibits this Carrier from abolishing one or more positions covered by O.R.T. employes upon which the work has reduced almost to the vanishing point, and requiring another O.R.T. employe at the same station and on the same seniority roster to absorb that remaining work."

and that "the work has been reduced almost to the vanishing point."

It also appears that the agent-operator is now required to suspend his regularly assigned hours at Hampton Station and serve as operator-switchtender at Hampton Yard Telegraph Office, some distance away.

It is well established in other awards that a position under the Telegraphers' Agreement cannot be abolished under the guise of transferring the work to other employes.

Article 22 provides that "Regularly assigned employes will not be required to perform service on other than their regular positions except in emergencies."

Article 25 (c) provides "Employes will not be required to suspend work during regularly assigned hours, or suspend work to absorb overtime."

In our opinion the Carrier has breached the contract when it requires the agent-operator to suspend work at the depot and perform work at a distant point away from his regular assignment in a non-emergency.

The fact that this change was made in favor of economy in the cost of operation is not a sufficient reason under the facts of this case to issue an ex parte order rather than by negotiation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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 and that because of such violation, the employe is entitled to reparation for services to which he was unjustly deprived.

AWARD

The claim of the employe is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.

DISSENTING OPINION TO AWARD 6468, DOCKET TE-6275

Here the majority have compounded error upon error by creating "obiter dictum" that is not supported by the record and then using it to conclude a sustaining award.

Award No. 5357 is strongly relied upon as precedent but there the issue was different from that here. The Petitioner there took no exception to the Agent-Operator performing the same work involved herein, but sought to have the work assigned to someone within the scope of the Telegraphers' Agreement. In respect of the very position of Agent-Operator involved here Petitioner there contended:

" * * * Now, the Carrier comes forth with the fallacious argument that it can arbitrarily declare the two 'Operator-Switch Tender' positions abolished and have the Agent-Operator continue to perform his duties in connection with these train movements and turn over

to train service employes the duties of handling the work outside these hours during the sixteen hour period between 3:00 P. M. and 7:00 A. M. * * *"

On the basis of Award No. 5357 this claim should have been denied.

For this reason we dissent.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 To Award No. 6468
Docket No. TE-6275

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The Central Railroad Company of New Jersey.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the original award we held that the Carrier had breached the contract when it required the agent operator to suspend work at the depot and perform work at a distant point away from his regular assignment in a non-emergency.

Because the parties interested are unable to agree as to the proper interpretation of the award, the award is again before us.

We note that prior to 1-1-52 three employes under the Scope of The Order of R. R. Telegraphers' Agreement were employed at Hampton, N. J. On the above date the Carrier abolished the two operator-switchtender positions by a change in the hours of employment of the remaining employe.

The award states "That the Carrier violated the Agreement and that because of such violation, the employe is entitled to reparation for services to which he was unjustly deprived."

It clearly appears in the record in this case that two of the three employes were deprived of work that they were entitled to.

The award was so meant.

Referee Edward M. Sharpe, who sat with the Division, as a member, when Award No. 6468 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.