Award No. 6716
Docket No. TE-6660

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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:

(1) The Carrier violated and continues to violate the provisions of the agreement between the parties, when, on October 1, 1951, it did, by unilateral action, declare the position of Freight Agent at the Freight Station, Spring Lake, New Jersey, abolished; while the work of the position was not in fact abolished but remained to be performed;

(2) Commencing October 1, 1951, the Carrier violated and continues to violate the provisions of said agreement when by unilateral action, it required the Ticket Agent-Operator and the Assistant Ticket Agent-Operator at the Passenger Station at Spring Lake to perform the duties of the Freight Agent;

(3) The former occupant of the position of Freight Agent at Spring Lake who was improperly removed from his assignment, as well as all other employes resultantly displaced from their assignments, shall be restored thereto and be compensated for all wage loss as well as payments provided in Article 22 for each day beginning with the date the Freight Agent's position was improperly declared abolished, or the date that an employe was displaced; and continuing on a day to day basis thereafter until the employes are restored to their respective assignments; and

(4) All other employes who were deprived of work as a result of this violative act shall be paid for all wage loss as well as payments provided in Article 22.

EMPLOYES' STATEMENT OF FACTS: An agreement is in effect between the parties bearing date of June 15, 1944, hereinafter referred to as the Telegraphers' Agreement.

Spring Lake, New Jersey, is located on the New York and Long Branch Seniority District No. 4.

There is a Freight Station and a Passenger Station at Spring Lake in separate buildings alongside the Carrier's right of way. They are located approximately 400 feet apart.

This same organization took a similar position in the dockets which gave rise to Awards 911 and 955 of this Division. In Award 911 the facts differed to the extent that the remaining work was required to be performed at a point eight-tenths of a mile from where the position abolished was located, while in the instant case that situation does not exist as both the Freight Agent and the Passenger Agent are located at the same station. This Division ruled against the organization's position in Award 911 and held:

"The record shows that the work in question, which is covered by the Telegraphers' Agreement, is being performed by employes included within the agreement and it is admitted that if these employes were located at the tower or the tower located at the depot, these employes could be required to perform this work. Petitioner contends, however, that Tiger and Worland are separate stations and for this reason, the work of the positions cannot be consolidated."

* * * * *

"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."

Carrier respectfully requests that this claim be denied in its entirely as being without merit.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to October 1, 1951, Carrier maintained at Spring Lake, N.J., a Ticket Agent-Operator and an Assistant Ticket Agent-Operator at its passenger station, with hours of 5:25 A. M. to 1:30 P. M., and 1:15 P. M. to 9:15 P. M., respectively, seven days per week. At its freight station, located some 400 feet from its passenger station, there was also a Freight Agent, with hours from 8:00 A. M. to 4:00 P. M., Monday through Friday.

On July 9, 1951, the Carrier's Superintendent advised the General Chairman by letter that on account of a decrease in passenger and freight business he proposed that the Freight Agent's position be abolished and the Freight and Passenger accounts consolidated, effective October 1, the Freight Agent's position to be reestablished on a seasonal basis from June to September, inclusive. The Superintendent's letter asked for the General Chairman's concurrence in this proposed action.

The General Chairman replied on August 7 that his decision would be unavailable until he made, in the near future, a thorough check.

Nothing further occurred until September 20 when the Carrier put into effect, as of October 1, the arrangement proposed in its Superintendent's letter of July 9. The General Chairman protested this action on September 27, calling attention to the rates applicable to all the positions involved and inviting further negotiations. The Superintendent replied on October 2, indicating a willingness to negotiate with respect to the rates to be established for the consolidated position. Apparently no such negotiations took place and this claim resulted.

We deduce from the record that some part of the Freight Agent's work, the amount of which we cannot accurately determine, remained after the Carrier's action of October 1, 1951. The Organization's General Chairman concedes the Carrier's right to consolidate or abolish positions under proper circumstances; and the Carrier apparently recognizes that there may be an obligation on it to make equitable wage adjustments when such things occur.

It does not appear to us, however, that the parties have exhausted the efforts which they are required to make to reconcile their differences on the property. Both parties apparently understand their contractual obligations and we think they must share the responsibility for their failure to make a good faith effort to settle dispute.

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 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 does not presently have jurisdiction over the dispute involved herein, for the reason that the parties have not made a good faith effort to settle the same on the property, as required by the Railway Labor Act, as amended.

AWARD

Claim remanded to the property for negotiation, without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1954.