Award No. 6945
Docket No. TE-6878

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, New Haven & Hartford Railroad, that:

(1) The Carrier violated and continues to violate the provisions of the Agreement between the parties, when, on March 2, 1949, it, by unilateral action, declared the position of Agent Operator-Draw Bridge Operator at Tiverton, Rhode Island, abolished while the work of the position was not in fact abolished but remained to be performed.

(2) Commencing March 2, 1949, the Carrier violated and continues to violate the provisions of said agreement when by unilateral action, it required the Agent Operator at Portmouth, Rhode Island to perform the duties of the Agent Operator-Draw Bridge Operator at Tiverton.

(3) The former occupant of the position of Agent Operator-Draw Bridge Operator at Tiverton, 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 29 for each day beginning with the date the Agent Operator-Draw Bridge Operator 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. The dates and the amount due each of the individuals suffering the effects of the violation, to be determined by a joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: An Agreement effective date of June 15, 1947, revised September 1, 1949, covering rates of pay and working conditions, is in effect between the parties to this dispute, hereinafter referred to as the Telegraphers' Agreement.

Prior to March 2, 1949, at Tiverton, Rhode Island, and Portsmouth, Rhode Island, there were two separate positions. The position at Tiverton was classified as Agent Operator-Draw Bridge Operator and the position at Portsmouth was classified as Agent Operator. The rate of pay of the Tiverton position was $1.095 an hour; and at Portsmouth it was $1.065 an hour. On the date specified, the Carrier by unilateral action, declared abolished the

at the drawbridge in Tiverton, tenuous as such an argument may be. The arrangements made being preferable from a traffic and operating standpoint, however, the change was initiated and the case disposed of on the property within a year.

Some four years later the organization now seeks to reverse that determination. In the meantime, traffic patterns at the two stations have become adjusted. The station buildings at Tiverton have been razed. In effect Employes now suggest that the situation be reversed and that Tiverton be restored as an open station.

Such action we submit is not required by the Agreement as interpreted on the New Haven system, by the Awards of this Board—and irrespective of either is now barred by reason of the delay in submitting the case here.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

OPINION OF BOARD: Tiverton is a town located in a rural community on a branch line of the Carrier, running from Fall River, Massachusetts to Newport, Rhode Island. In 1930 there were some eight or ten round trips of passenger service between Newport and Boston stopping at Tiverton. There were five positions under the Telegraphers' Agreement at that place. Passenger service was progressively curtailed and finally abandoned in the middle of the 30's. Thereafter the sale of passenger tickets, baggage and mail work disappeared. It also appears from the record that freight service became small in volume, to one freight extra to Newport and back operated normally five days a week. Late in 1948 the handling of less than carload freight traffic in Tiverton, which had occasioned substantial losses due to small volume, was discontinued. This was pursuant to tariffs filed with the State and Federal authorities. The five telegrapher positions at Tiverton had, therefore been progressively abolished and the remaining work was finally assigned to the agent-operator at Portsmouth.

Studies developed that prior to the discontinuance of the LCL service the agent had been handling an average of three to four shipments a day. Subsequent to that change and at the time the assigned position was abolished, freight service was averaging between one and two shipments a day, this figure including both inbound and outbound freight. The only other work performed was the handling of a draw bridge a short distance from the station at Tiverton, which was left in an open position for water traffic except when rail crossings were to be made. On such occasions, which were approximately 18 to 20 times a week, the agent-operator at Portsmouth went to the bridge to operate it.

It is apparent in the instant case that the volume of work at Tiverton has materially declined until it is very small, averaging approximately one and one-half shipments a day. The business at Portsmouth, a distance of four miles, has similarly declined to approximately two or three shipments a day. The Petitioner takes the position that the Carrier was not within its rights to abolish this position at Tiverton under the circumstances and assign this work to the agent at Portsmouth; that the Carrier is not privileged to consolidate or combine these two positions except by negotiation, as provided for in the Agreement. The Carrier takes the position that the decline in traffic at Tiverton justified the abolition of this position under the provisions of the Agreement and the factual situation here involved.

Therefore, the question at issue involves the Carrier's right to abolish the position of agent-operator at Tiverton, which it did on March 2, 1949, and consolidate the remaining work thereof with the work of a similar position at Portsmouth, both positions being included in the same Agreement and same seniority district.

The Petitioner cites four awards between the same parties, including similar or like subject matter. We have taken cognizance of these awards

and find that they are not in point in the instant case. To distinguish the same would unnecessarily lengthen this Opinion. We cannot find that the Carrier violated any of the rules of the Agreement. Under the circumstances as presented by the record, the following is deemed pertinent in determining this claim. As was said in Award 5803—"Whether or not a station shall be closed is a prerogative of management, subject to the interests of the public which it is the duty of the public service commission to protect. * * * It is the duty of management to operate its railroad with efficiency and economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employes of another craft who are entitled to perform it. The Carrier is, of course, limited by any agreement it has made in conflict with the method employed. We have found no rules which have been violated by the Carrier in closing these one-man stations and assigning the remaining work of the agent-telegraphers to those entitled to perform it. Awards 4939, 4992, 5283, 5318, 5719." (Also Award 6854.)

As was said in Award 6022—"There are two principles, so well established there is no occasion for citing Awards supporting them, that must be given consideration in determining the rights of parties under the confronting facts as we have construed them. The first is that except insofar as it has restricted itself by the Agreement the assignment of work necessary for its operations lies within the Carrier's discretion. The second is that in the absence of any rules of the Agreement precluding it from doing so it is the prerogative of Management, so long as it actually intends to accomplish such a result, to abolish a position if a substantial part of the work thereof has disappeared. * * *" (See Award 6839 and Awards cited therein.)

The Carrier may in the interests of economy and efficiency of its operations abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the collective agreement. However, when doing so, the work of the positions abolished must be assigned to and performed by the class of employes entitled thereto.

From an analysis of the record the authorities cited and the reasons stated herein, we conclude that the claim should be denied.

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 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.