Award No. 6954
Docket No. TE-6934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

(1) Carrier violated Agreement between the parties hereto, when on the 16th day of June, 1951, it established a less favorable rate of pay for the position of Agent-Telegrapher, Screven, Georgia.

(2) Carrier shall be required to restore rate of pay for Agent-Telegrapher at Screven, Georgia, to that prevailing prior to June 16, 1951, together with any increase in rate of pay applicable to such position.

(3) Carrier shall be required to compensate E. Williams, Agent-Telegrapher (or his successors to such position) Screven, Georgia, the difference between the amount paid and the amount agreed to be paid for such position, from June 16, 1951, until such violative practice is discontinued.

EMPLOYES' STATEMENT OF FACTS: On the 24th day of May, 1937, in Case No. R-331, the National Mediation Board issued its certification of representation as follows:

> "On the basis of the investigation and report of election the National Mediation Board hereby certifies that The Order of Railroad Telegraphers has been duly designated and authorized to represent telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, and such agents as are shown in the existing wage scale of the Atlantic Coast Line Railroad Company for the purpose of the Railway Labor Act."

Thereupon, The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, and the Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier or Company, entered into a collective bargaining agreement concerning wages, hours of service and other conditions of employment for all employes of Carrier within the bargaining unit. Such Agreement became effective on the 1st day of November, 1939, and has remained in full force and effect since said date, except as modified or changed by amendment. The Agreement is on file with this Board and is, by reference, included in this submission as though copied herein word for word.

to the contrary, the carrier's action is fully supported by the terms of the current agreement, by custom, practice and understanding.

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is the first of four companion dockets TE-6934-5-8 and 6954) this day decided and all involving the contention that Carrier's action violated the Agreement when it "unilaterally" and/or "arbitrarily" reclassified Agent-telegraphers' positions and established Agents' positions at named points with lower rates of pay. Claims in this docket come from Screven, Georgia. The remaining claims originate and come from other points on the railroad. Some factual differences have been noted in the other dockets, but same are not urged as relevant or material to a decision in this and the three related dockets.

The genesis of the dispute is in Petitioner's belief that Carrier has transferred "telegraph work to train service employes and others" at the points in question, but it has elected to bring other facets of the dispute to Board attention by claims now pending with which we are not here concerned and which, naturally, we do not undertake to decide, despite Petitioner's attempt to argue the same subject matter in connection with claims now before us for decision.

In preparing all submissions, which relate to the moving cause of controversy, Petitioner should have looked carefully to the Board's Rules of Procedure (Circular No. 1, last reprinted November 1, 1948) before splitting claims. In connection therewith and for "statement of claim" all parties are on notice, that:

> "Under this caption the petitioner or petitioners must clearly state the particular question, upon which an award is desired."

Pursuant to the foregoing it has become the accepted practice to regard the substantive part of claim as the pleading on which issue must be joined, and other parts of the claim as being the proposed remedy. No amendment to part one, the substantive pleading, is ever permissible and the Board cannot go beyond that part of the claim, as stated, in deciding the issue framed thereby.

In connection with their submissions, it is expected of all parties that they will clearly and briefly set forth all relevant, argumentative facts and the Agreement or rules involved, under their statement of position. It is to this part of the submission that the Board looks for the theory of the case, and failure on the part of one or both parties to adhere strictly to procedural requirements has contributed much to the unacceptability, by the parties to the dispute, of Board awards.

The moving party always has the right to rely upon an alleged violation of one or more rules and to cite purported violative action in more than one respect in connection with one and the same dispute, but it cannot vacillate or make other than a frontal attack. It can better accomplish by direction than indirection whatever may be its object.

In these four dockets we have the narrow issue of Carrier's right to reduce rates of pay for wage rated positions under the Agreement without

first seeking and obtaining the consent and approval of the duly designated Employe Representative.

By the way in which Petitioner has framed the issue, it says, "the sole question herein involved is the reduction of wages," and we agree that it has so stated its claim. Hence, there is an effort made to hold us to a determination of what are the wage rates for Agent-telegraphers' positions when those rates are already fixed by the Agreement if the positions remain and are being worked. The Carrier tells us that the Agent-telegrapher positions were duly abolished and positions of Agents were newly created and rates of pay were fixed in accordance with the Agreement. Petitioner does not directly join issue in this docket on Carrier's statement that new positions were created.

First impression gained was that Petitioner holds the reduction in wages to be violative of Article 2 (a), but when Carrier put in issue Article 7 as authority for the rate now in effect, and points to other rates in the wage schedule which it says are comparable for similar positions, Petitioner says, after having invoked a rule bearing thereon, that "the reclassification (of the positions) is not pertinent or relevant to the dispute." It then tries the oblique approach, and next holds:

> "Rule (sic) 7 is a method, agreed upon, to determine rates of pay for new positions. It is contemplated that there shall be an agreement between the parties as to the proper applicable rate. The management of Carrier does not have, possess, or retain, the right, acting unilaterally to fix the rate of pay for any position, new or old."

The foregoing amounts to an assertion, according to claim and Petitioner's theory based thereon, that the Carrier cannot act at all without conference and agreement with the Employe Representative; that the Employes first should have been consulted and agreement reached before rates of pay were reduced; and that Petitioner's bargaining power under the Railway Labor Act, as amended, has been circumvented.

No one disputes Petitioner's right of representation in wage and other matters relating to terms and conditions of employment for those whom it represents. But here the parties complied with the spirit and intent of the law when they entered into the written Agreement which is before us. We agree, also, that Petitioner has a voice when changes are made in rates of pay for established positions, and in determining rates for new positions, but it should not be so impatient about the right to make that voice heard. We know of nothing in the law or the Board's procedures to restrain the Carrier in the first exercise of its managerial judgment in wage matters, subject to Petitioner's right to dispute the action taken, and, in event it cannot accomplish a settlement, Board review is next in order.

Congress created this Board as an agency for deciding disputes, but gave it no wage rate setting powers unless disputes exist over rates of pay for work subject to contract. In the exercise of its limited power and authority, the Board has studiously avoided being drawn into controversies unless and until invited and then only for the limited purposes held out by the invitation. The result has been to leave with the Carrier the right to exercise its own initiative in matters that may lead to disputes, the Board being willing to review that action when its proper jurisdiction is invoked. In our opinion, the Employes' position under the Agreement is fully protected by that right of review.

In the instant dockets, Petitioner could have had an expression from the Board whether new positions had been created and/or whether the rates fixed by the Carrier are in accord with Article 7, but such controversy was not put in issue by the claim and developed pursuant to issue properly joined thereon in accordance with Board procedure.

If intended to put in issue here the question whether any reduction is permissible when positions are reclassified, Petitioner could clearly have framed that issue by its statement of claim and position, so as to have brought about an interpretation of Article 2(a), and then by holding fast thereto could have obtained that result, but it shirked its duty in both instances.

As earlier indicated, we do not undertake to say what is at issue or what should be the decision in those claims with which we are not concerned in these dockets, but we do hold that Carrier had the right to put the reduced rates into effect, subject to Petitioner's right to question that action by a correct statement of claim and on issue properly joined and argued in accordance with the Board's Rules of Procedure.

On basis of claim at issue and Employe statement of position, a denial award is in order.

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

On basis of claim at issue and Employe statement of position, the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of April, 1955.