Award No. 7768
Docket No. TE-7146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

(1) Carrier violated Agreement between the parties hereto when, on the 1st day of October, 1952, acting unilaterally, arbitrarily and capriciously, it established a less favorable rate of pay for the position of Agent-telegrapher (or Agent) at Kenton, Tennessee, than that provided in the Agreement.

(2) Carrier violated Agreement between the parties hereto when on the 1st day of October, 1952, and continuing thereafter, it deprived employes holding seniority on the Telegraphers' roster for the Jackson Division seniority district of the right to perform work, services and duties on the position of Agent-telegrapher (or Agent) at Kenton, Tennessee.

(3) Carrier violated Agreement between the parties hereto when, on the 1st day of October, 1952, and continuing thereafter, it failed and refused to bulletin vacancy in the position of Agent-telegrapher (or Agent) to employes holding seniority on the Jackson Division Telegraphers' seniority roster as provided in the Agreement.

(4) Carrier shall be required to restore the rate of pay for position of Agent-telegrapher (or Agent) at Kenton, Tennessee to the rate prevailing prior to October 1, 1952, together with any increase in rate of pay applicable thereto.

(5) Carrier shall be required to bulletin the vacancy in position of Agent-telegrapher (or Agent) Kenton, Tennessee, as provided in the Agreement.

(6) Carrier shall be required to compensate the senior idle extra employe, or if none, the senior idle employe, on the Telegraphers' roster for Jackson Division at the hourly rate of pay applicable thereto, (Kenton) for eight hours each day, five days each week (Monday through Friday) beginning October 1, 1952, and continuing until such violations hereinbefore set out are discontinued.

The claim of the employes is grounded essentially in the fact that the carrier declined to enter into a special arrangement for adjusting the situation here involved on a basis other than that required by the governing rules of the Agreement, contrary to the action that had been taken in some other situations on the property at other times. While there can be no question that the parties are at liberty to conclude special agreements in such circumstances, no rules or provisions exist whereby they are compelled to do so. In this instance the carrier, after a bona fide effort to reach agreement, declined to accept the proposals of the employes because of their interference with the judgment of the management as to the requirements of the service, **and in doing so the carrier was exercising a right which was in no way restricted by the provisions of the prevailing Agreements.** Since, in addition, as already noted, it adhered meticulously to all the rules of the Agreement in effectuating the changes involved, the claim of the employes must be held to be without merit." (Emphasis supplied.)

Also see **Award 4824**—The Order of Railroad Telegraphers vs. The Kansas City Southern Railway Company, Referee Edward F. Carter, decided March 31, 1950, wherein the Board stated in part:

". . . The effect of Carrier's action was to abolish the agency position and to establish the new position of agent-telegrapher. This it had a right to do."

CONCLUSION

For thirty years, Agent-Telegrapher positions at various locations have been abolished and small non-telegraph Agent positions created. This action has been taken with the full knowledge and concurrence of various representatives of the Telegraphers. The rates of pay of the newly created positions have been determined under the provisions of Rule 8 of the agreement.

The action of the parties to the agreements, over these years, shows that it was never intended that the agreements in any way restricted the right of the Carrier to abolish Agent-Telegrapher positions and create small non-telegraph Agent positions. The evidence shows that various agreements as to seniority and rates of pay of small non-telegraph Agent positions have been entered into substantiating this fact.

The procedure of the Carrier in abolishing the Agent-Telegrapher position at Kenton and the establishment of a small non-telegraph Agent position, is the same as in some thirty-four similar instances over a thirty year period.

When viewed in the light of the various agreements between the parties parties and their interpretation of the contract over a thirty year period, the evidence conclusively shows that the instant claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement of March 1, 1921 between the parties, which was in effect until June 1, 1953, listed a position of agent-telegrapher at Kenton, Tennessee, at a rate of 69.5¢ per hour. As of October 1, 1952, this rate, by virtue of various wage increases, was $1.865 per hour. On August 26, 1952, the Carrier orally advised Petitioner's Chairman of its intention to abolish the position of agent-telegrapher at Kenton and to establish there a small non-telegraph agency. The General Chairman took the position that this would be a violation of the Agreement. Under date of August 27, 1952, Carrier by letter stated that its action was proper under Article 8 of the Agreements, which provides:

"When new positions are created, these rules and regulations will apply to them, and compensation will be fixed to conform with positions of similar class, as provided for in the wage scale."

Carrier stated its opinion that the rate for the new position at Kenton should be the same as the rate at similar positions at Shannon, Saltillo and Guntown, and suggested a conference to discuss the proposed rate for the new position at Kenton. A conference was held on September 16 at which the General Chairman took the position that Carrier had no right unilaterally to abolish the agent-telegrapher position and to establish a new small non-telegrapher agent position at Kenton; that this amounted to a reclassification of that position and a change in the rate which was negotiated into the Agreement for that position in violation of Article 3 (a) of the Agreement entitled "Preservation of Rates and Classification" providing:

> "The entering of employes in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein provided."

Meanwhile, under date of September 8, 1952, Carrier had issued a bulletin to all non-telegraph agents which stated that the telegraph agency at Kenton was to be discontinued at the close of business on September 20, 1952 and invited applications for the position of non-telegraph agent at that point at the rate of $242.71 per month, which conformed to the rate at Guntown, Rienzi, Saltillo and Shannon. This bulletin also directed that all telephones and telegraph equipment be removed from the Kenton office. No applications from non-telegraph agents were received in answer to the bulletin and the Carrier hired a new employe to fill the position. Petitioner's claim is that Carrier violated the Agreement when it established a less favorable rate of pay for the position at Kenton than that provided in the Agreement; and when it deprived employes holding seniority under the Agreement of the right to perform work at Kenton and refused to bulletin the vacancy to such employes. Further, that Carrier shall compensate the senior idle employe at the rate prescribed in the Agreement for Kenton for each work day begining October 1, 1952 and continuing thereafter until the violations are discontinued. Two other parts of the claim—that the rate be restored and the vacancy be bulletined to all employes— were automatically eliminated by the negotiation of a new Agreement effective June 1, 1953 which listed Kenton as a small non-telegraph agency at the rate originally bulletined by Carrier. This also limits the compensation claim to the period from October 1, 1952 until June 1, 1953, the date of the new Agreement.

There is a dispute of fact as to the past interpretation of the Rules involved. Carrier asserts that since the effective date of the March 1, 1929 Agreement, 29 agent-telegrapher positions have been abolished and small non-telegraph agencies establishd at the same location under Rule 8, following the same procedure as followed in this case; that is, notification of the General Chairman by Carrier that such change was to take place, followed by negotiation as to the proper rate to be established for the new position. Petitioner, on the other hand, insists that in each of these cases when an agent-telegrapher position was changed to a small non-telegraph agency, the change itself was a matter of negotiation and was only done by Carrier after it was agreed to by the General Chairman.

Awards Nos. 644 and 2088 have held specifically that if there is no longer any telegrapher work at a station, the Carrier can reclassify the station as a non-telegraph agency. There is no dispute of fact that there was no longer any telegrapher work remaining at Kenton after the abolition of the old position and the creation of the new one. Petitioner argues, however, that the amount of telegrapher work prior to the abolition of the position had been so small that the new position in effect merely continued practically all of the same work as the old position under a new name, and therefore amounted to a reclassification and not a legitimate abolition. Petitioner also argues that in neither Award 644 nor 2088 was there a rule similar to Article 3 (a) in this case.

In Award No. 1470, the claim was made that the Carrier had improperly reclassified the position of agent-yardmaster to that of agent without change

in the duties of the position. In that case there was a rule identical to Article 3 (a), which in turn is identical to paragraph (b) of Article III of Supplement No. 13 to General Order No. 27, issued by the Director General of Railroads, December 28, 1918. Petitioner there cited Addendum No. 1 to Supplement No. 13, which interpreted the rule, and also argued and cited the so-called Cuyler letter interpreting that interpretation, the same argument as is made in this case. That Award held that the issue under this rule is one of fact, and the question is whether the duties and responsibilities of the disputed position were or were not substantially changed.

We think that this is the correct interpretation of Article 3 (a), and applying it to the instant case, we find that the elimination of all telegrapher duties was a substantial change in the position at Kenton, even though the change was more in the nature of the duties and responsibilities than the actual volume of work performed. We are supported in this conclusion by the fact that the parties themselves considered the small non-telegraph agent positions sufficiently different from all other positions under the scope rule of the Agreement to provide that they alone shall be monthly-rated rather than hourly-rated, (Article 1(b)), and to provide that their seniority should be restricted as between themselves and separate seniority lists should be kept for them (Article 13 (b)).

It is thus our conclusion that Carrier was within its rights in abolishing the agent-telegrapher position at Kenton. The next question is whether it was within its rights in creating the position of "small" non-telegraph agency at that point. Awards 644 and 894 held that the elimination of telegraph work did not necessarily justify a classification of "small" non-telegraph agency. It was held that this was a question of fact and was governed by the new position rule, similar to Article 8 in this case. From the record in this case, we are convinced that Carrier did look to positions of similar work and responsibility in the same seniority district as Kenton and on the basis of this comparison, classified Kenton as a small non-telegraph agency and properly fixed the rate of the Kenton position in conformity with similar positions in the seniority district. Petitioner was afforded an opportunity to discuss the proper rate but chose not to do so; nor has it offered any evidence that the rate was not a proper one if the Carrier was within its rights in establishing the new position, as we have held that it was.

The one remaining question is whether, after having abolished the position of agent-telegrapher and having created the position of small non-telegraph agent at a lower rate, Carrier violated any Agreement rules when, after bulletining this new position only to non-telegraph agents and receiving no bids, it hired a new employe rather than giving extra employes then on the telegrapher roster in that district an opportunity to bid on the job.

It is Petitioner's contention that Article 12 (a) of the Agreement clearly provides that all vacancies will be bulletined to all employes. Carrier, on the other hand, points to Article 13 (f) which provides that seniority of small non-telegraph agents will be restricted as between themselves and that a separate seniority list will be prepared for them. Carrier also states that in the past, small non-telegraph agency positions have been bulletined only to employes on the small non-telegraph agent rosters, and submits a number of bulletins in support of this. Petitioner disputes this statement. The bulletins submitted by Carrier are not conclusive. One of them is addressed to non-telegraph agents but the rest of them are addressed to "All Concerned", and may or may not have been limited to non-telegraph agents.

It would appear that Carrier was correct in first bulletining this position only to non-telegraph agents under Rule 13 (f). However, whether after this was done and no bids were received, the Agreement required that such positions be offered to other telegraphers on the district seniority roster before being filled by someone not in the employ of the Carrier, is another question. In view of the fact that Carrier states without contradiction that no extra employe lost compensation between October 1, 1952 and June 1, 1953 because of not having had an opportunity to fill the position of non-

telegraph agent at Kenton, and that there are now different rules in the present Agreement, we find it unnecessary to decide this question.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March, 1957.