Award No. 8015
Docket No. TE-7226

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chesapeake and Ohio Railroad (Chesapeake District):

(1) That Carrier violated the Agreement between the parties hereto when on the 20th day of October, 1952, acting unilaterally, it arbitrarily abolished the position of Agent, Nelsonville, Ohio.

(2) That Carrier violated the Agreement, when on the 20th day of October, 1952, acting unilaterally, it arbitrarily abolished the position of first shift Operator-Clerk, Nelsonville, Ohio.

(3) That Carrier violated the Agreement, when effective October 20, 1952, acting unilaterally, it arbitrarily consolidated and combined the position of Agent with that of first shift Operator-Clerk and caused, required and permitted a single employe, covered by the Agreement, to perform all the work of the two separately negotiated positions at Nelsonville, Ohio.

(4) That all employes, covered by the Agreement, displaced or deprived of work as a result of such violations or adversely affected thereby shall be paid for all wages lost and necessary incurred as a result thereof.

(5) That the position of Agent, Nelsonville, Ohio, shall be restored and position filled as provided in the Agreement.

(6) That the position of first shift Operator-Clerk, Nelsonvile, Ohio, shall be restored to the status prevailing as of October 19, 1952.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collective bargaining agreements between The Chesapeake and Ohio Railway Company (Chesapeake District), hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreements are on file with this Board and are, by reference, included herewith as though set out herein word for word. Since two separate agreements are involved herein we shall refer to the Agreement effective September 1, 1949, (revised as to wages February 1,

manner that will be in conformity therewith (Awards 3906, 4044, and 4987), and is entitled to that opportunity." (Emphasis ours.)

Therefore, Paragraphs (5) and (6) of the claim should be dismissed.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: At Nelsonville, Ohio, prior to October 18, 1952, there were, among other positions, a position of Agent and a position of first-shift Operator-Clerk. It is clear from the record that over a period of years, business at Nelsonville had dropped off to a very large degree. As a result of the decrease in business, Carrier decided to reduce forces, and among other reductions, decided to abolish the separate positions of Agent and first-shift Operator-Clerk and to create one new position of Agent-Operator to perform the remaining duties of both of the abolished positions. In June, 1952, Carrier notified Petitioner of its intention to make these changes and requested a conference in order to reach agreement as to the various problems involved in carrying the proposed changes out. Conferences were held, but no agreement was reached.

Carrier unilaterally abolished the position of first-shift Operator-Clerk on Friday, October 18, 1952 and the position of Agent on Sunday, October 19, 1952. Effective October 20, 1952 a new position of Agent-Operator was established.

Petitioner contends that the unilateral abolishment of the two positions and creation of the new position were violations of its agreements with the Carrier and requests that both positions be restored. In addition, claim is made on behalf of all employes displaced or deprived of work as a result of the changes, for all wages lost and expenses incurred as a result thereof.

The position of first-shift Operator-Clerk was covered by and subject in all respects to the general collective bargaining agreement between the parties. The position of Agent was a so-called excepted position and was subject only to the scope rule of the general agreement between the parties. In addition, the position of Agent was covered by a Special Agreement between the parties, separate and apart from their general agreement, known as Addendum 3. Addendum 3, after provisions relating to the filling of the excepted positions covered thereby and the seniority rights of incumbents of those positions, provides as follows in paragraph 4:

> "Should it be agreed at any time to convert any position named herein to a rank and file position under all rules of the general agreement of August 1, 1927 or of November 1, 1927, an hourly rate comparable with the rate paid similar positions on the seniority territory on which located will be placed in effect for such positions."

We think it clear from prior decisions of this Division, that where economic circumstances so warrant, Carrier may abolish two positions of the same class or craft and create a new position of the same class or craft combining the work previously included in the two abolished positions, unless prevented from doing so by a provision in the agreement between the Carrier and the representative of the class or craft involved. See Awards 1101 and 6944. There is nothing in the general agreement between the parties which prevents such action by the Carrier, so that the question before us is whether such action is limited by paragraph 4 of Addendum 3, quoted above, or by the fact that one of the positions involved was subject to the general agreement and the other was subject to Addendum 3.

We cannot find in paragraph 4 or any other paragraph of Addendum 3 a limitation upon the right of the Carrier to abolish a position included therein where, as in this case, it is economically justified. Since there is no such limitation in either the general agreement or Addendum 3, the first two

paragraphs of the claim, which are based on the fact that Carrier unilaterally abolished the positions, find no support in the rules, and must consequently be denied.

The main contention of Petitioner is that the work of the position of Agent cannot be transferred to a position under the general agreement, as was done in this case, without the agreement of Petitioner. This contention is based upon paragraph 4 of Addendum 3. The positions covered by Addendum 3 were excepted from the regular agreement because of the special nature of the work required and the need for filling them with qualified men, regardless of seniority. Much of this work was of a sales and public relations nature and most of the positions, including the Agent at Nelsonville, were paid on a monthly basis to cover all services performed. We agree that under paragraph 4, Carrier is restricted from converting any position in Addendum 3 to a rank and file position under all rules of the general agreement, without agreement by Petitioner. Thus, as long as the position of Agent at Nelsonville existed, it could not be brought under the general agreement by unilateral action of the carrier. However, we do not understand paragraph 4 to mean that where the work of a position included in Addendum 3 has dwindled away to the point where such a separate position is no longer justified economically, the Carrier is precluded from abolishing that position and assigning the remaining work thereof to a position which is within the general agreement.

The position of Agent at Nelsonville was included within the scope rule of the general agreement and, as has been held many times by this Board, the inclusion of the position includes the work of that position. Thus the mere fact that the position of Agent came under Addendum 3 and the position of Operator-Clerk came under the general agreement did not prevent the combining of the work of these two positions into a new position covered by the general agreement, since all of the work involved was always under the scope rule of the general agreement. What is prevented is what is specifically referred to in paragraph 4; that is, the "conversion" of a position named in Addendum 3 from an excepted position to a rank and file position under all rules of the general agreement. In our view, this was not done in the case before us and therefore paragraph 4 of Addendum 3 was not violated.

Since there was no violation of any rule of either the general agreement or Addendum 3 in the abolition of the positions involved and the creation of a new position of Agent-Operator, the claim must be denied in its entirety.

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 17th day of July, 1957.