

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Western Maryland Railway, that:

1. Carrier violated the Agreement between the parties hereto, when, commencing on the 1st day of July, 1952, and continuing thereafter, it failed and refused to advertise, as provided in Rule 29, to employes on the Hagerstown Seniority Roster, the position of Agent, Gettysburg, Pennsylvania.

2. The senior idle employe on such seniority district, shall be compensated for one day (8 hours), at the rate of pay for similar positions on such seniority district, for each and every day from the 1st day of July, 1952, and continuing thereafter until such position of Agent, Gettysburg, Pennsylvania, is filled by an employe on such seniority roster, as provided in the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between Western Maryland Railway Company, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement became effective on the 1st day of February, 1951.

The dispute submitted herein was handled on the property, in the usual manner, to and including the highest officer designated by the Company to entertain such claims and was denied. The dispute having been handled in accordance with the provisions of the Railway Labor Act, as amended, the Third Division of the National Railroad Adjustment Board has jurisdiction of the parties and the subject-matter.

This dispute involves the position of Agent, Gettysburg, Pennsylvania. The classification of "Agents" is included in the Scope Rule of the Agreement. A proviso is added, however, as follows:

"(Freight and Ticket Agents as shown in this schedule)"

Based on this exception, arrived at in the give and take of collective bargaining, the position of Agent, Gettysburg, was prior to July 16, 1948, not covered by any of the rules of the Agreement.

6. The Agreement has not been violated.

7. Awards of the National Railroad Adjustment Board support the position of the Carrier.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of the National Railroad Adjustment Board. All data submitted in support of its position by the Carrier have been presented to the Employees and made a part of the particular question in dispute.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: Prior to July 1, 1952, C. W. Meyers was the Carrier's Agent at Gettysburg, Pennsylvania. His position was not within the coverage of the Telegraphers' Agreement, though most positions of Agents are. The force under him consisted entirely of clerks, covered under the Clerk's Agreement. The work performed by Agent Meyers had never been performed by anyone covered by the Telegraphers' Agreement.

Rule 29 of the Agreement is a schedule of wages. It lists the various work locations, the positions of agent, operator, and agent-operator covered by the Agreement at such locations, and the agreed upon rate per hour for each. By an Agreement dated July 16, 1948, this Rule was amended by adding six locations, with a position opposite each, but with the rate per hour blank, together with the following provision:

"When these positions are vacated by present incumbent for any reason, they will then be subject to advertisement and rates will be adjusted to conform with rates on similar positions on their seniority districts."

The location Gettysburg, and the position Agent, were included in that list of six. Obviously, the effect of this amendment was to provide for the future covering of those listed positions under the Agreement—positions which at the time were not covered. Several of the six listed positions subsequently became vacant, and were advertised and rates agreed upon as provided in Rule 29.

Agent Meyers, at Gettysburg, was a very old man, and very ill, and for the last few years of his incumbency did less and less of the work of his position. More and more of his work was gradually taken over by the clerks, until, when he retired effective July 1, 1952, at the age of 86 years, he was performing no functions whatever beyond signing his name, as a matter of form, to reports prepared by others. At the same time, during those last years, the work at the location had materially decreased.

Accordingly, since Mr. Meyers had performed no work, when he retired the Carrier determined to abolish the position. Instead, it placed the station under the supervisory jurisdiction of the Agent at Hanover. This was not an innovation in procedure, as the Carrier has for years had certain of its stations, Fulton and Arlington, under the supervisory jurisdiction of the Agent at another station, Port Covington. All that the Agent at Hanover does with reference to Gettysburg, is to sign reports, which takes only a few minutes a day, and exercise a remote supervisory control. There is now no Agent at Gettysburg. The work at Gettysburg continues to be performed by the clerks there just as it had been for several years prior to Meyers' retirement.

The Brotherhood contends that in failing to advertise the position of Agent at Gettysburg, and fill it with the appointment of an employe on the Telegraphers' seniority roster, the Carrier violated Rule 29. In other words, it construes the language above quoted from Rule 29 as an absolute and unequivocal agreement to continue the position and to fill it.

We do not so read the provision in question. By its terms, all it provides is that the position "will then be **subject** to advertisement . . ." (Emphasis supplied) All the other positions listed in Rule 29, of which there are over a hundred, are by virtue of the Scope Rule and the Seniority Rules **subject** to advertisement. The same situation exists with respect to other unions under other agreements. Yet that fact has never been held to prevent the Carrier from abolishing a position. All that the provision of Rule 29 did was to provide for future coverage, and a method of fixing rates when such coverage took effect. There is nothing to indicate an intent to guarantee the continuation of the position contrary to all established practice.

If business should increase at Gettysburg, so that need arises for an Agent there, there is no question that the position will be within the coverage of the Agreement, by virtue of Rule 29. But there is nothing in the Agreement which requires the Carrier to fill an unneeded position.

If the position were filled now, work would necessarily have to be taken from the clerks to give to the position of Agent. Either that, or the Agent would have nothing to do, just as Mr. Meyers had nothing to do. The latter alternative is too absurd for this Board to even consider it; the former would give rise to a valid claim by the Clerks for a violation of their Agreement. It is inconceivable that this Board could seriously consider rendering an award which would necessarily have one or the other of those effects. It must be borne in mind that this is not a case for application of the "ebb and flow" doctrine, for no one under the coverage of the Telegraphers' Agreement ever performed the work now being performed by the Clerks. If work performed by the Clerks was taken from them and given to an Agent, it would be a clear violation of the Clerks' Agreement.

For these reasons the claim will 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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.