

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD

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

1. The Carrier violated the Agreement between the parties when and because it unilaterally discontinued the position of Car Distributor, Hartford, Conn., although the work of the position remained to be performed.
2. The Carrier further violated the Agreement in permitting an employe not on the Hartford seniority district Telegraphers' roster to assume the duties of Car Distributor.
3. The Carrier further violated the requirements of the agreement when its representatives failed to render its decision in the here involved dispute within the time prescribed by Article 26 of said agreement.
4. The claim as amended shall be allowed in full, i. e., the position and the work thereof shall be restored to the Telegraphers on the Hartford Seniority District; and further B. M. Spencer, regularly assigned incumbent, who was improperly removed from his position shall be restored thereto and paid the difference between that which he earned on other positions and that of Car Distributor, Hartford District, together with that to which entitled under the terms of Article 29 of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, dated September 1, 1949, as to rates of pay and working conditions, copies of which are on file with the National Railroad Adjustment Board, and by reference is made a part of this Statement of Facts.

The wage scale, pages 49 through 61 of the current agreement, lists the positions, showing the location, classification, rates of pay, etc., on each separate seniority district. At page 51, on the New Haven District, among other positions is the following:

"* * *

CONCLUSION

Carrier respectfully submits the claim should be denied.

OPINION OF BOARD: The Claimant was the regularly assigned Car Distributor in the office of the Chief Dispatcher of the Hartford Division at Hartford, Conn. He worked under the Chief Dispatcher, being a sort of assistant to him, his duties being to communicate with the various agents in the stations on the Division, obtaining information and giving instructions as to where to send cars which had been unloaded, etc. His position was in the Hartford Seniority District.

Effective September 28, 1952, the Carrier abolished the Hartford Division, consolidating it into the New Haven Division with headquarters in New Haven. The position of Superintendent at Hartford, his staff, the train dispatching office at that point, the Chief Dispatcher's position and office and staff, were all eliminated. Because the changes in telephone circuits necessary to centralize the work at New Haven were not completed until December 28, 1952, the Claimant continued to perform his duties at Hartford, where the circuits remained temporarily, until that date, when he was transferred temporarily to New Haven to work with the New Haven Car Distributor for about ten days until the latter became familiar with the enlarged territory. His temporary position was then abolished, and he displaced onto another position in the Hartford Seniority District.

The claim is based upon the contention that the work of Car Distributor that Claimant had performed remained to be performed, and was transferred to be performed by an employee in another seniority district.

The Organization contends, first, that the claim must be sustained for violation by the Carrier of Article 26, which requires the Carrier to answer appeals within 60 days. Since this case was submitted that contention as to the meaning of Article 26 has been ruled upon by this Board. In Award No. 8100, decided October 11, 1957, we held that this provision of this same Agreement was not to be interpreted as mandatory and as requiring the sustaining of the claim regardless of the merits. We feel bound by that award interpreting this Agreement in a case between the same parties.

On the merits the case is extremely difficult, as each party has cited decisions of this Board which apparently sustain their contrary contentions. No two cases are precisely alike on their facts, of course, and so mere quotations from decisions, taken out of the context of the facts, are misleading. The decisions cited have been given careful consideration, and we have reached the conclusion that on the facts here presented those cited by the Carrier are the more persuasive.

We think the fallacy in the Organization's position is to be found in the written statement submitted at the hearing: "The employees having contracted with the Carrier for the performance of the work of Car Distributor on the Hartford seniority district, Carrier is in violation . . .". The employees did not contract for a Car Distributor on the Hartford seniority district, but for a Car Distributor **on the Hartford Operating Division**. The fact (and we assume it to be a fact) that the boundaries of the seniority district and of the Division were identical, is immaterial. There is no longer a Hartford Division. It has been abolished—consolidated into the New Haven Division. No question is raised as to the right of the Carrier to abolish the Hartford Division. Of course, such abolition did not effect abolition also of the seniority district—that could be done only by mutual agreement.

Nor did it effect abolition of positions within the Hartford seniority district where the work of such positions continued to be performed within the seniority district. But it necessarily effected the abolition of positions within that district where the work of such positions no longer existed. The work of Car Distributor for the Hartford Division no longer existed, for there was no such Division. There was no longer a Chief Dispatcher for the

Hartford Division for a Car Distributor to assist; there was no longer a Chief Dispatcher's Office in Hartford for a Car Distributor to be attached to.

It is true that after the consolidation the same agents at the same stations had to be contacted and given instructions, and in that sense the work continued to be performed. But it was not work to be performed **at those stations**, but at the Chief Dispatcher's Office, and there was no longer such an office in Hartford. No contention is made that the Carrier had no right to abolish and abandon that office.

An analogous case might exist where Station A is abolished in one seniority district, and shipments which were formerly received at and sent from that station are now handled at Station B, five miles distant, in another seniority district. Obviously the position of Agent, and all other positions, at the abandoned station are eliminated, in spite of the fact that the shipments previously handled there are now handled at Station B. The same shippers are contacted now by the agent at B as were formerly contacted by the agent at A, just as the same agents are now contacted by the Car Distributor at New Haven as were formerly contacted by the Car Distributor at Hartford.

But quite apart from this analysis of the problem, we think the claim would have to be denied on the basis of past practice. At one time there were fourteen operating divisions on the Carrier's lines, with a Car Distributor for each division, each of which was listed in the wage scale of the Agreement just as in this case. By 1928 the number of divisions had been reduced to 9, with a corresponding reduction in the number of Car Distributor positions. During the next ten years the number was further reduced to four, with corresponding reduction of Car Distributor positions. The provisions of the Agreement have not been substantially changed during this period with respect to the matter in issue, yet no protest resulted from those reductions. This argues that the parties have in the past interpreted the Agreement as permitting the action taken. See Award No. 5884.

For all these reasons the claim must 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 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 10th day of March, 1958.