

Award No. 8325
Docket No. TE-7287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad, that:

(a) The Carrier violated and continues to violate the provisions of the agreement between the parties when it declared the position of Agent at Martins Creek, Pa., abolished without in fact abolishing the work belonging to said position.

(b) If the Carrier elects to continue the performance of the work embraced by the Agent's position at Martins Creek, it shall be performed by, and be assigned to, employees coming under the agreement at this location; and

(c) For each working day commencing June 10, 1953, and forward on each day until all the work formerly performed by the agent at Martins Creek is returned to the Telegraphers' class and craft, the senior idle extra man, or if none, then the senior idle employe on his rest day, shall be paid a day's pay of eight hours at the established rate at Martins Creek; the payees (idle employees) to be determined by a joint check of the Carrier's assignment records.

EMPLOYEES' STATEMENT OF FACTS: Agreements by and between the parties bearing effective dates of November 1, 1947 and July 1, 1953, are in evidence; copies are on file with the National Railroad Adjustment Board and are hereby made a part of this dispute as set out word for word.

Martins Creek, Pennsylvania has been an agency in charge of an Agent covered by the Telegraphers' Agreement for many years. It is located on a freight branch line of the Carrier. The assigned hours of the Agent were 8:00 A. M. to 5:00 P. M. with one hour allowed for meal between Noon and 1:00 P. M. This station was closed on Sundays and holidays.

Martins Creek is an interchange point of the Carrier where freight cars are transferred between each of the three railroads at this point. These three railroads are; (1) Delaware, Lackawanna and Western; (2) Lehigh and New England; and, (3) Pennsylvania Railroad. An average of approximately 25

(c) When claim has been presented in accordance with paragraph (a) of this Article, the employe or the representative filing the claim will be notified in writing of the decision of the Company within forty-five (45) days from the date claim was presented. If not so notified, the claim will be allowed. Such allowance does not constitute a precedent on any question of rule interpretation or application.

(d) Claims denied will be considered invalid unless appealed within sixty (60) days from the date on which the claim was denied. When a decision is appealed the representative will be notified in writing of the decision within sixty (60) days from the date the decision was appealed. If not so notified, the claim will be allowed. Such allowance does not constitute a precedent on any question of rule interpretation or application.

(e) When a claim is allowed, the employe and his representative shall be advised, in writing, the amount involved and the payroll on which the amount will be paid."

The Employes have definitely failed to comply with any of the terms of the above agreement rule. Moreover, President G. E. Leighty, in his letter of September 15, 1954, addressed to A. I. Tummon, Secretary, National Railroad Adjustment Board, is in error in stating to your Board, the following:

"The Committee has handled the dispute under the Railway Labor Act, amended, and it has failed of adjudication. * * *"

The Carrier asserts the Organization has not handled this particular dispute in accordance with existing agreement nor the Railway Labor Act.

All data in support of the Carrier's Submission have been handled with the Employes on the property.

(Exhibits not reproduced)

OPINION OF BOARD: The action of the Carrier complained of here was the abolition of the position of Agent at Martins Creek, Pennsylvania, which occurred on April 17, 1950. The station there was closed—even the station building was removed—and the work was transferred to the Agent at Nazareth, 18 miles distant. The Organization's case is based upon the allegation that certain duties remained to be done at Martins Creek, and were done by clerks assigned to the Nazareth Station who made daily trips to Martins Creek for that purpose.

The evidence establishes that the clerk acted as a messenger for the Agent at Nazareth, in picking up shipping instructions from the Alpha-Portland Cement Company at Martins Creek and delivering them to the Agent at Nazareth. It further appears that he jotted down the numbers of freight cars at Martins Creek for the information of the Agent.

We cannot find that this work was work coming exclusively under the jurisdiction of the Agreement with this Organization. The fact that the Organization waited over three years to file a claim indicates a lack of confidence on the part of the Organization in the merits of the claim.

The Organization relies on Award No. 4576. In that case the Carrier abolished two agencies and established a new joint agency, requiring the incumbent of the joint agency position to perform work at both stations. The case before us is quite different. The Agent at Nazareth performs no work at Martins Creek.

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 30th day of April, 1958.