Award No. 8374
Docket No. TE-8177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

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, on February 20, 1953, it declared abolished the position of operator, Danbury, Connecticut, with assigned hours 12:00 P.M. to 8:00 A.M., without abolishing the work, and transferred the work of the position and assigned the performance of the same to employes not covered by this agreement.

2. The duties of said position shall be restored to the Telegraphers Agreement. The former incumbent and any other employes under the agreement improperly displaced from regular positions as a result of this violation shall be returned to their respective former positions and compensated for any loss of wages, together with that to which entitled under the provisions of Article 29 of the agreement.

3. All other employes who have been adversely affected or deprived of work because of such violation shall be paid for all wages lost.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement between the parties hereto dated September 1, 1949, covering wages and working conditions of employes of the Carrier represented by the Order of Railroad Telegraphers.

This dispute is concerned with the declared abolishment of the third shift telegrapher operator clerk's position at Danbury, Connecticut on February 20, 1953. It is the contention of the Employes that the work of the position remained after that date, but the Carrier in violation of the agreement, transferred its performance to employes outside the coverage of the agreement.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

OPINION OF BOARD: The wage scale of the applicable Agreement between the patries contains the following under the heading "New Haven Division";

"Location	Occupation	No. of Posi-tions	Rates Hourly or Monthly With*
Danbury	Operator-Clerks	3	1.678"

As set forth by the Organization,

> "This dispute is concerned with the declared abolishment of the third shift telegraph operator clerk's position at Danbury, Connecticut on February 20, 1953. It is the contention of the Employes that the work of the position remained after that date, but the Carrier in violation of the agreement, transferred its performance to employes outside the coverage of the agreement."

Carrier notes

> " * * * it is claimed that there followed diversion of the telephoning of two reports a night eventually destined for division headquarters at New Haven.
>
> "These reports are the so-called 'FX' report for Danbury yard and the 'Q-7' report for one freight train originating at Danbury. Neither of these controls train operation. Prior to the introduction of telephone service between stations, they were handled by wire the printed form still carries the words 'telegraphic report'), but since at least 1925 they have been telephoned exclusively to headquarters."

While the parties' views with respect to the amount of work remaining after the position was abolished are in conflict, there is sufficient admissible evidence to indicate that some portion, however great or small, did remain and was performed by others not covered by the applicable Agreement.

Argument is offered in behalf of the Carrier that

> " * * * it has the right to abolish a position when sufficient work no longer exists to warrant continuance thereof; that telegraphers do not have the exclusive right over use of the telephone, or to handle the reports involved in this dispute; that this dispute merely involves the substitution of one operator for another, i.e., the yard clerk telephones another operator instead of telephoning the operator at Danbury; that the present practice at Danbury is identical with the practice which has existed at Pittsfield, Poughkeepsie and Beacon for many years without protest from the Employes; and that, consequently, this claim should be denied."

The issue here involved, of abolishing a covered position and the assignment of the duties remaining to persons not covered by the Telegraphers'

Agreement, has been before this Board involving the same Carrier a number of times.

That issue was settled by, among others, Award 5431 (Parker) wherein we held:

> "One of the elementary principles early established by decisions of this Division of the Board and so uniformly adhered to that it needs no citation of awards to support it, is that a position established pursuant to the provisions of an existing agreement cannot be abolished and its work assigned to employes belonging to another craft."

In sustaining part 1 of this claim, we do not mean that the Carrier is prohibited by the applicable Agreement from abolishing a position when sufficient work no longer exists to warrant continuance thereof."

We do mean, as was stated in Award 434, that

> "* * * any changes in which the rules of the agreement between the employes and the carrier are affected, or in which positions that have been negotiated into the agreement are concerned, the carrier is equally obligated with the employes in following the orderly process that has been provided in the rules when such changes are contemplated. * * *." (Underscoring added.)

However, we will not sustain parts 2 and 3 of the claim as presented.

We will sustain Organization's claim for compensation for any loss of wages for the holder of the position in question as of its abolition February 20, 1953 until such time as the parties follow "the orderly process" of the Agreement and remove the position from the Agreement by conference and agreement, as provided by Article 35 (b).

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 has been violated.

AWARD

Part 1 of the claim sustained.

Part 2 of the claim is sustained only to the indicated in Opinion.

Part 3 of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1958

DISSENT TO AWARD NUMBER 8374, DOCKET NUMBER TE-8177

In support of its decision here, the majority cites Award 5431 (Parker) in which the claim involved a carrier's requiring—

> "* * * employes having no rights thereunder, by use of the telephone, as to act is telephone-block operators, in obtaining permission for trains and motor hand cars to occupy and use the main tracks within designated block limit territory, report the time that trains and motor hand cars clear such block limit territory, and copy motor hand cars orders Form 1433-b, at Rising, Massachusetts, during times that employes under the agreement at that location are not on duty."

In the instant case, the telephoning of the "FX" and "Q-7" reports did not control train operations and the record shows that telephoning of such reports had never been recognized on this carreir as belonging exclusively to telegraphers either by rule or practice. In such a situation, Award 5404 (Parker) held as follows:

> "* * * where the work to be performed by the particular craft in question is not describedl or spelled out in the scope rule or elsewhere in the agreement specifically reserved, and the question for decision is whether the work involved was even within the purview of the contract, there is such ambiguity in its terms that intention of the parties, to be determined by recourse to custom, tradition, practice and other indicia of their understanding, is the decisive factor in determining whether the scope rule covers all work ordinarily performed by the classes of employes listed therein or was intended to leave to other employes that which they had been performing prior to the negotiations of the agreement."

The majority herein also cites the wage scale appended to the agreement and Award 434 is constituting a requirement for negotiating the removal of positions by conference and agreement as provided by Article 35 (b). Award 5431, supra, itself rejected arguments concerning the effect of the wage scale. Furthermore, Award 5431, relied upon by the majority herein, recognized Carrier's right to abolish positions without negotiation but found that, in that case, the work

> "had not disappeared to the extent necessary to permit the Carrier to abolish one of such positions without negotiations or agreement."

In the instant case it was shown that the work of telephoning the two reports involved consumed but a few minutes work per day.

Our recent Awards have consistently rejected similar arguments. in Award 6945, involving the same parties, agreement and rules as in the instant case, Referee Messmore rejected similar arguments and held as follows:

> "* * * Under the circumstances as presented by the record, the following is deemed pertinent in determining this claim. As was said in Award 5803—'Whether or not a station shall be closed is a prerogative of management, subject to the interests of the public which it is the duty of the public service commission to protect. * * * It is the duty of management to operate its railroad with efficiency and

economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employes of another craft who are entitled to perform it. The Carrier is, of course, limited by any agreement it has made in conflict with the method employed. We have found no rules which have been violated by the Carrier in closing these one-man stations and assigning the remaining work of the agent-telegraphers to those entitled to perform it. Awards 4939, 4992, 5283, 5318, 5719.' (Also Award 6854.)"

In Award 6610 (Bakke) we held:

"The Organization argues, 'We contend that when the matter of establishing and maintaining of positions is subject to negotiation and agreement, that abolishment of those positions is similarly subject to negotiation and agreement.' Here is where the Organization assumes too much because there are many refinements to that general rule that have found their way into the Awards of this Division, and Rule 39 does not require that the abolishment of positions be handled through negotiation.

"* * *

"It must be obvious that the net result of the Organization's contentions, if sustained, would be to give it the power of veto over the Carrier's right to readjust its operation facilities and labor demands in response to the 'ebb and flow' of the traffic load, and to freeze all positions and wage rates as of a given time. The Carrier has not surrendered to that extent in this docket."

For the foregoing reasons, Award 8374 is in error and we dissent. An Award of this character wrongfully increases the difficulties confronting carriers in their struggle for survival.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp