

Award No. 8662

Docket No. TE-7829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD
(Buffalo and East)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad (Buffalo and East), that:

1. Carrier violated and continues to violate the Agreement between the parties hereto when, effective with close of business October 15, 1954, it, acting unilaterally, declared abolished the position of Agent, Cohoes, New York; that such position was not, in fact, abolished but the work thereof remained to be and has been, continuously, performed, at all times subsequent thereto, by employees not covered by Telegraphers' Agreement.

2. Carrier shall be required to restore J. H. Wall to his position of Agent, Cohoes, New York and to compensate him for any wage loss, travel and waiting time, plus additional expenses, necessarily incurred, as a result of wrongfully removing him from regular assigned position, beginning October 16, 1954 and continuing until the violation is discontinued.

3. Carrier shall also make whole any and all employees adversely affected as a result of the removal of the agent's position at Cohoes, New York, for any wage loss, travel and waiting time expense, and other expenses incurred, from October 16, 1954 to the date the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the New York Central Railroad Company (Buffalo and East), hereinafter referred to as Company or Carrier and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective July 1, 1948 and has been amended.

The agreement and all amendments thereto are included, by reference, in this Submission.

between a new clerical position established effective October 18, 1954 at Cohoes, and previously authorized clerical positions at Troy Freight Station, as shown in Column 3, Carrier's Exhibit No. 1. Troy Freight Station then became the governing station for operations at Cohoes. No supervisory duties formerly performed by Agent Wall were transferred to any clerical position at either location, supervision of Cohoes operations being vested in the Agent at Troy Freight Station, an appointive position. No clerical duties were transferred from Cohoes to the position of Agent at Troy at the close of business October 15, 1954.

2. CLERICAL WORK PERFORMED BY THE AGENCY POSITION WAS NOT EXCLUSIVE TO THE TELEGRAPHER CLASS.

The clerical work performed by Agent Wall during the period December 1, 1953 to October 15, 1954, inclusive, was routine clerical work and did not belong exclusively to the Telegraphers' class. Those clerical duties had, prior to December 1, 1953, been performed by a position or positions coming under the scope of the Clerks' Agreement and upon discontinuance of Agent Wall's position October 15, 1954 those clerical duties were restored to employees coming under the scope of the Clerks' Agreement. Obviously then the position of Agent at Cohoes did not have exclusive right to such clerical duties. Award 5318.

Carrier has the right to use telegraphers, when necessary, to perform other duties, but such action cannot be construed as giving telegraphers the exclusive right to the work. The clerical work contended by the Organization as still continued since the abolishment of the position of Agent on October 15, 1954 has always been performed by other employees, and such work was only performed by the Agent to fill in his tour of duty, the Carrier being entitled since May 1, 1954 to require the Agent to render service to the extent of 210½ hours each month at his authorized salary.

Your Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties, sometimes performed by telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to telegraphers, nor does the Scope Rule contain any such provision, nor does such right exist through custom and practice, where the major duties of the position have been abolished, and those remaining are of a clerical nature. See Award 6363.

Carrier was justified in its action in abolishing the position of Agent, and in so doing has in no way violated the provisions of the current Agreement.

CONCLUSION: Carrier holds that the clerical duties performed by the Agency position at Cohoes and transferred to clerical positions at Troy Freight Station on December 1, 1953 and October 18, 1954, or absorbed by the one remaining clerical position at Cohoes October 18, 1954, were not exclusively the right of the Telegraphers' class to perform. Accordingly, supported by decisions of your honorable Board, the claim should be denied.

All facts or arguments herein presented have been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket was previously before the Division. It was determined at that time that notice to the Clerks' Organization was

required by Section 3, First (j) of the Railway Labor Act as interpreted by the Courts. Award No. 8216 was made deferring decision on the merits of the claim until such notice was given. Subsequent to the making of Award No. 8216 notice was given as indicated. Therefore, the claim is now before the Division for a decision on the merits.

In the claim Petitioner charges that on or about October 15, 1954, Carrier, unilaterally and in violation of the effective agreement, abolished the position of Agent at Cohoes, N.Y. It is further charged that Carrier did not in fact abolish the position; that thereafter, all the duties and responsibilities of the position were performed by employees not covered by the Telegraphers' Agreement.

Carrier contends that the position in question was in fact abolished; that in so doing it did not violate the applicable agreement.

It has been argued to the Referee that since Award No. 8216 was made by the Division, indicating the necessity of notice to the Clerks' Organization this claim should be automatically sustained, in that notice would not have been unnecessary in the event of a denial of the claim. In this view, we cannot concur.

Since this question has been raised, it is appropriate that the present Referee comment on it, in as much as he has on occasion ruled that notice was unnecessary in the event of a denial award. It is the present Referee's view that where a claim should be denied on its face, it is unnecessary to give notice to third parties. However, where the claim is such that there is a real possibility of a sustaining award, notice should be given. This does not preclude a denial award after notice has been given where a full and mature review of record dictates that such an award is proper. An award indicating the necessity of notice does not have the effect of committing either the Referee or the Division to a sustaining award on the merits. Rather after the procedural defect has been cured, full and uninhibited consideration must be given to the merits and the appropriate award made.

It appears from the record that over a period of years there was a substantial decline in the volume of business handled at the Cohoes Station. At the time the Carrier declared the Agent's position abolished there were two employees remaining, the Agent and a Receiving and Delivery Clerk. At or about the same time the Agent's position was abolished, the Receiving and Delivery Clerk's position was reclassified as Assistant Cashier and Clerk. While reference is made in the record to the creation of this as a new position, the General Chairman in a letter dated January 8, 1955 refers to it as a reclassification (Employees Exhibit No. 5). This accords with the Carrier's contention.

The question to be answered here goes to the issue of whether the Carrier violated the agreement when it declared the Agent's position abolished and gave certain duties which he had performed to employees not covered by the Telegraphers' Agreement.

This Division has long held the view that a carrier may abolish positions in the interest of efficiency provided such action is not in violation of agreement commitments which the carrier may have made. In the instant situation two positions existed at the time of the Carrier's action. Many awards of the Division dealing with these situations have been one position stations, where, when abolishment took place, the remaining duties were given to employees outside the applicable agreement. Here one position remained.

It seems quite clear from the record that a large proportion of the duties of the Cohoes Agent were duties not exclusive for telegraphers. In fact, about the only remaining duty of the Agent at Cohoes immediately prior to the abolishing of the position which might be argued to be an exclusive telegrapher responsibility was that of a very minimal amount of supervision. This had come to be so insignificant that it cannot be said to bar the action taken by the Carrier.

The facts revealed by the record, the relevant agreement rules, and a long line of Third Division awards dictate a denial award here.

While there are revealed minor variations in facts and rules involved in these awards, there are certain principles which have been enunciated in them which are applicable to the instant case. Among others the following support the conclusions reached herein: Awards 4348, 5719, 5803, 5867, 6363, 8061, 8357.

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 12th day of January, 1959.