

Award No. 9673

Docket No. MW-8181

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated and continues to violate the agreement and the understanding of August 17, 1932, when, on February 22, 1954, it required Drawbridge Tender Patsy S. Zampini to discontinue performing Drawbridge Tender's work at Middletown, Connecticut and thereafter continued to deny Mr. Zampini the right to perform Drawbridge Tender's work at Middletown, Connecticut.

2. That the work and the duties of Drawbridge Tender at Middletown, Connecticut, be restored to and assigned to Drawbridge Tender Patsy S. Zampini.

3. That Drawbridge Tender Patsy S. Zampini be allowed pay at the applicable Drawbridge Tender's rate for a number of hours equal to that he would have worked as a Drawbridge Tender had he been properly permitted to perform such duties on and subsequent to February 22, 1954; payment to continue until the violation referred to in Part (1) of this claim is discontinued.

EMPLOYES' STATEMENT OF FACTS: There is no dispute in this submission between the Order of Railroad Telegraphers and the Brotherhood of Maintenance of Way Employes as will be noted in the following quoted letter, an autostat copy of which is attached to this submission as Employes' Exhibit "A".

"THE ORDER OF RAILROAD TELEGRAPHERS
3860 Lindell Boulevard
St. Louis 8, Missouri

January 7, 1955

Mr. T. C. Carroll, President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit 3, Michigan

Re: Your File 3-N.Y.N.H.&H.

Since claimant in this case was then the only employe of this classification at Middletown, here again is unmistakable evidence of the intent to place him under the Telegraphers' agreement. Except to bring the rate of pay up to that date, the same entry appears (p. 54) in the schedule with the latter organization effective September 1, 1949.

The position in issue being covered by the Telegraphers' agreement there was no crossing of craft lines when its few remaining duties were combined with those of another assignment under the same contract at the same location. Nor is there any provision of the understanding of August 19, 1932 (Ex. C), that would inhibit such action.

Furthermore, a case with the Order of Railroad Telegraphers has disposed of any contention that such combination of duties constituted a violation of its schedule. Attached are the following exhibits:

- D. Appeal of March 30, 1954, by the Telegraphers' General Chairman.
- E. Decision of July 7, 1954.
- F. Letter of July 15, 1954.

The time for appeal from this decision limited by Article V(2) of the non-operating employes' national agreement of August 21, 1954, which is in effect on this property, expired December 31, 1955, without any submission to this or any other board. This is a complete and final disposition of any contention that the action taken in this case was not in accord with the provisions of the governing agreement with the Telegraphers' organization.

Carrier respectfully submits the claim should be denied in every particular.

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

(Exhibits not reproduced)

OPINION OF BOARD: On May 2, 1932, the Order of Railroad Telegraphers requested that the drawbridge tenders' positions at Middletown and Niantic be reclassified and transferred to it from the Maintenance of Way Employees. At a joint conference between the two Organizations and the Carrier it was agreed that the request be withdrawn as to Niantic and disposed of as to Middletown according to a memorandum letter to both Organizations from E. B. Perry, Assistant to the General Manager of the Carrier, dated August 19, 1932, and reading as follows:

"Referring to previous correspondence and our discussion of August 17th, regarding the request of the Telegraphers for reclassification of drawbridge tenders' positions at the Middletown, Conn. drawbridge, and for the inclusion of such positions within the scope of the Telegraphers' Agreement.

There are three positions involved, the names of the present occupants with their basic daily rates and tours of duty are as indicated below:

P. J. Duff, \$4.73 per day,
7:00 A. M. to 3:00 P. M.—works all year.

Thomas F. Maher, \$4.40 per day,
3:00 P. M. to 11:00 P. M.—works while navigation open,

Patrick J. Chambers, \$4.40 per day,
7:00 P. M. to 7:00 A. M.—works while navigation open.

It was agreed at our conference on August 17th, that no change would be made insofar as the present situation is concerned, but as permanent vacancies develop in any of these three positions, and after the remaining occupants have been given opportunity of placing themselves in line with their qualifications as determined by the superintendent, that the resulting vacancy would be advertised for bid for telegraphers on the Hartford Division, subject to the following understandings:

First: that there will be no change in the existing rates other than from a daily to an hourly basis.

Second: that as an employe covered by the Telegraphers' Agreement may hereafter be assigned in accordance with the above, that he will qualify himself at his own expense.

Third: that any Telegrapher thus assigned will perform all of the duties attached to the position without remuneration other than that produced by the application of the basic rate.

Fourth: that as one or more of these positions may be temporarily suspended when navigation closes, an understanding will be had as to the rights of any telegrapher, who may hereafter be assigned, during the period of such temporary discontinuance as it will be the desire that he be restored to the position when again reestablished."

In accordance with the memo letter the basic rate was changed from a daily to an hourly basis. The position of bridge tender appeared in subsequent Telegrapher's Agreements, although not entitled to be filled by them except under the conditions stated in the memorandum letter.

Due to declining traffic on the line, two of the positions were cancelled, apparently as the name incumbents eliminated themselves; and on February 22, 1954, Claimant Zampini, who was named in the above memorandum letter as Chambers, succeeded to the only remaining position. By that date train movements had been reduced to not over two daily on only five (occasionally six) days per week. The Carrier then abolished Claimant's position and assigned the remaining duties to the ticket agent, represented by the Order of Railroad Telegraphers.

The Carrier contends that by the inclusion of bridge tenders in the Telegraphers' Agreement after the 1932 memo, bridge tenders' work immediately came within the Telegraphers' jurisdiction; that the memorandum letter did not obligate Carrier to maintain his position during the Claimant's lifetime even if the work did not justify its retention; that under the authority of many awards the Carrier was not required to maintain a sinecure for any employe but could abolish his position and assign its remaining duties to another

employe of the same craft or of another craft entitled to perform it; that consequently there was no violation of the Agreement.

The trouble with that argument is that under the 1932 memorandum the work of Claimant's position could not be assigned to a Telegrapher so long as Claimant held the position. What we are here considering is not bridge tenders' work in general, but the work of this particular bridge tender's position held by claimant.

Its work was not brought within Telegraphers' scope until such time as Claimant might vacate it, for the agreement, as expressed by the Memorandum was:

"that no change would be made insofar as the present situation is concerned, but as permanent vacancies develop in any of these three positions, * * * the resulting vacancy would be advertised for bid for telegraphers * * *."

It is true that the 1932 memorandum does not obligate the Carrier to maintain the Claimant's position throughout his life regardless of need; but so long as any substantial work of his position continues Carrier can abolish it only by assigning the remaining duties to employes entitled to perform it, which does not include the Telegraphers during Claimant's incumbency.

That the position was mentioned in Telegraphers' Agreement negotiated after 1932 does not mean that Claimant's position immediately came within their jurisdiction despite the 1932 memorandum. Since any of the positions might be vacated at any time on short notice by reason of resignation, death or disability of the incumbent, it was obviously necessary that the Telegraphers be in immediate position to fill them; but until such occurrence they were not entitled to perform the work of his particular position.

It is unfortunate that sufficient other work within Claimant's jurisdiction could not have been assigned to him to fill out his hours, for in these circumstances that was the only remedy available to the Carrier under the 1932 memorandum, since the work of his position could not be assigned to Telegraphers.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 5th day of December, 1960.