

Award No. 10193

Docket No. TE-8384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railroad, that:

(1) The Carrier violated and continues to violate the Agreement between the parties, when on January 16, 1954, acting alone, it declared abolished the position of operator-clerk at Jefferson Street (Nashville) without in fact abolishing the work of said position; and,

(2) The Carrier violated and continues to violate said Agreement when, commencing January 16, 1954, it required or permitted employees not covered by the Agreement, at Jefferson Street and/or Pittsfield (Nashville) to perform the work of the abolished position; and,

(3) The Carrier shall restore the improperly abolished position at Jefferson Street (Nashville), and in addition, establish positions necessary to perform the work coming within the Scope of the Telegraphers' Agreement at this location; and

(4) Carrier shall, commencing January 16, 1954, and on a continuing day to day basis, so long as Carrier permits the violative practice to continue at Jefferson Street and/or Pittsfield, pay to the senior idle employees, extra in preference, on the district (identity to be established by a check of Carrier records), eight (8) hours' pay at the rate of the abolished position at Jefferson Street (Nashville), for each eight (8) hour tour of duty, around the clock, except on holidays when such employees would be entitled to be paid the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between Tennessee Central Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective May 1, 1924 and has been in many respects amended. Copies of the agreement as amended are on file with this Board and by reference are included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Management to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective

Surely the Carrier is entitled to know what it is called upon to decide, and your Board has held in numerous cases that the burden of establishing

facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.

Thereafter Employees on several occasions sent to the Supervisor of Wages some sheets listing train orders allegedly in support of their claim to violation of the agreement at Jefferson Street, Nashville, whereupon they were informed that any evidence in support of the original allegation of violation of the agreement should be taken up with the General Superintendent, and that any train orders in support of a new claim or contention to violation of the agreement should be taken up with the General Superintendent, which is the usual manner of handling, and a specific requirement of Section 3(i) of the Railway Labor Act.

It is an absolute necessity that an alleged violation of the agreement be presented with sufficient facts and supporting evidence so that the issue, or issues, can be determined with reasonable clarity, and when not so presented and progressed as in the case here before your Board, it is the opinion of Carrier that such a deficient claim or contention is not, in fact, a dispute in any sense of the term, and particularly as the term is used in pertinent portions of the Railway Labor Act.

As the instant case has not been presented, argued and progressed by Employees so that orderly handling and consideration could be given and decision reached on the merits of their contention that a violation of the agreement had occurred, Carrier respectfully moves that it is not properly before your Board and should, therefore, be dismissed.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employees state that prior to February 16, 1951 there was no position under the Telegraphers Agreement at Jefferson Street, although many years ago there had been positions assigned at or near Jefferson Street. As a result of numerous violations, principally in the handling of train orders and communications affecting the movement of trains, various claims were filed by the Telegraphers' General Chairman. Considerable discussion ensued culminating with an Agreement entered into on February 14, 1951 establishing one position of Operator-Clerk at Jefferson Street. This Agreement is evidenced by letter dated February 16, 1951 written by Mr. Caskey Knott, Superintendent of Wages, and the highest officer handling claims under the Telegraphers' Agreement for Carrier. The letter reads as follows:

"Mr. W. H. Wiggerman, General Chairman,
The Order of Railroad Telegraphers
P. O. Box 281,
Crossville, Tennessee.

"Dear Sir:

"Referring to conference with your committee on the 14th instant, with Vice-President Woodman of the O.R.T. participating:

"Your committee proposed that if the position of operator-clerk at Jefferson Street is re-established and bulletined under the provisions of Rule 17(e) of the applicable agreement that all claims alleging violation of the agreement account train orders copied at Jefferson Street and/or Pittsfield would be withdrawn. This proposal was accepted and instructions will be issued promptly to the end that the position referred to at Jefferson Street will be re-established and bulletin issued accordingly.

"Yours truly,

/s/ Caskey Knott
Supervisor of Wages."

In conformity with this Agreement the position of Operator-Clerk was bulletined and filled by an Employee under the Telegraphers' Agreement. The position was continued until January 16, 1954, when it was abolished and the Operator-Clerk removed from his position. A claim was immediately filed, protesting removal of the position as being in violation of the Agreement. This claim was filed with Mr. Knott, Supervisor of Wages. The letter reads as follows:

"Crossville, Tennessee
January 25, 1954

"Mr. Caskey Knott, Supervisor of Wages
Tennessee Central Railway Company
Nashville, Tennessee

"Dear Sir:

"Please refer to Mr. Waddell's bulletin No. 4 dated January 8, 1954, which abolished the position of Operator-clerk at Jefferson Street.

"If you will consult your file on the claim for 'Jefferson Street and/or Pittsfield (Nashville)', and especially your letter of February 16, 1951, you will find that this position at Jefferson Street was bulletined and filled as a result of an agreement at a conference on Feb. 14, 1951. Due to your acceptance of our proposal that this position be re-established, our above-mentioned claim was withdrawn.

"Since this position has now been abolished, the same conditions which made the claim necessary before will again exist. I am sure that Mr. Waddell has overlooked our conference and agreement concerning this position, and I will appreciate your handling with him for prompt re-establishment of the Operator-clerk position at Jefferson Street.

"Will you advise me when I may expect bulletin so that it will not be found necessary to reinstate this claim?"

"Yours truly,

/s/ W. H. Wiggerman
W. H. Wiggerman, Gen. Chairman
Division No. 64, O.R.T."

Knott answered on February 17, 1954 in part as follows:

"* * * The responsibility of determining the need for positions rests with the General Superintendent and I could not with propriety instruct him to continue a position which in his judgment may be dispensed with."

The General Chairman on March 18, 1954 addressed a letter to J. T. Waddell, General Superintendent, which reads as follows:

"Crossville, Tennessee
March 18, 1954

"Mr. J. T. Waddell, General Superintendent
Tennessee Central Railway Company
Nashville, Tennessee

"Dear Sir:

"On account of the position of Operator-clerk at Jefferson Street (Nashville) having been abolished January 16, 1954, and since that time the arrival, departure, and movement of trains have been reported and train orders have been copied and various communication of record service has been performed, and this work continues to be performed by employees who are not covered by the agreement between the Order of Railroad Telegraphers and the Tennessee Central Railway Company, the committee of Division No. 64 of the Order of Railroad Telegraphers hereby makes claim for 8 hours pay for each of three 8-hour tours (24 hours) daily in behalf of the senior extra employee idle, and in the event there are no extra employees idle, then in behalf of the senior employee idle, covered by the seniority roster of Division No. 64 on the Tennessee Central Railway Company, beginning January 16, 1954, and continuing as long as the carrier continues to violate the agreement.

"It will be appreciated if you will advise me when payments will be made on this claim, and if and when positions will be established and employees covered by our agreement placed thereon to perform this work.

"Yours truly,

/s/ W. H. Wiggerman,
Gen. Chairman Division No. 64"

The claim, as presented to this Board, seems to be that due to the Agreement entered into on February 14, 1951 between the parties, the Operator-Clerk position at Jefferson Street was negotiated into the contract between these parties and could not be unilaterally abolished without negotiation or mediation

in the manner provided in the Railway Labor Act. On January 8, 1954 Waddell's Bulletin No. 4 abolished the position of Operator-Clerk at Jefferson Street. On January 25, 1954, Wiggerman, the General Chairman, wrote to Caskey Knott, Supervisor of Wages, asking him to consult his file relative to the Agreement entered into concerning the position at Jefferson Street dated February 14, 1951. Wiggerman further stated that since the position has now been abolished, that the same conditions that made the claims necessary before will exist, and asked that the position be re-established. The General Chairman made no claim in his letter to Knott or to Waddell that the Carrier could not unilaterally abolish the position of Operator-Clerk at Jefferson Street due to the fact that it had been negotiated into the Agreement.

The claim of the Employees as presented to this Board that the Carrier could not unilaterally abolish the Operator-Clerk position at Jefferson Street, except by negotiations with the Telegraphers or mediation in the manner provided in the Railway Labor Act is not the claim that was presented on the property. The claim presented on the property was a general claim for 24 hours' pay for Telegraphers around the clock for general violations and not for 8 hours' compensation for the Operator-Clerk position that had been abolished.

The record in this Docket shows that the claim before the Board was not handled in the usual manner, as provided in Section 3, first (i) of the Railway Labor Act, as amended; therefore, the claim will be dismissed.

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

For the reasons stated in the Opinion, this claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1961.