

Award No. 10378

Docket No. TE-9618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**HUDSON RAPID TUBES CORPORATION, SUCCESSOR TO
HUDSON AND MANHATTAN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson & Manhattan Railroad that:

1. (a) Carrier violated and continues to violate the agreement between the parties when it improperly abolished a gateman's position at Grove Street Station, New Jersey on Saturdays, Sundays and holidays and transferred the work thereof to the agent at the same location.

(b) Carrier be required to pay the senior idle extra employe a day's pay on Sunday, June 3, 1956, and on each Saturday and Sunday thereafter until the violation is corrected; or, in the absence of an available extra employe, on any Saturday or Sunday, pay N. Brown, incumbent of the gateman's position or his successor eight hours at the time and one-half rate; and, pay N. Brown or his successor on each holiday subsequent to June 3, 1956 eight hours at the time and one-half rate.

2. (a) Carrier violated and continues to violate the agreement between the parties when it improperly abolished a gateman's position at 33rd Street Terminal, New York City on Saturdays and transferred the work thereof to the agent at the same location.

(b) Carrier be required to pay the senior idle extra employe a day's pay on Saturday, June 9, 1956 and on each Saturday thereafter until the violation is corrected; or, in the absence of an available extra employe, on any Saturday, pay A. Holder, incumbent of the gateman's position, or his successor eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

At Grove Street, Jersey City, New Jersey, prior to June 3, 1956, the Carrier maintained three positions of Agent giving continuous service around

Carrier is bankrupt and would have been derelict in its obligations to the United States District Court for the Southern District of New York if it had not effected the saving possible here.

Conclusion

Carrier submits that the claim of the employees should be dismissed as unwarranted.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 3, 1956, Carrier maintained three Agent positions at Grove Street, Jersey City, New Jersey. The three Agents worked different shifts giving that station twenty-four hour service. There was also a seven-day position of Gateman who worked Monday through Friday and who was relieved on Saturday and Sunday by a relief Gateman.

Effective June 3, 1956, Carrier abolished the relief Gateman position on Saturday, Sunday and holidays. Whatever Gateman work was done on Saturday, Sunday and holidays was assigned to the Agent.

Prior to June 9, 1956, the Carrier maintained three Agent positions at the 33rd Street Terminal, New York City, New York. The three Agents also worked different shifts giving that station twenty-four hour service. The Carrier also maintained two six-day Gateman positions. A relief Gateman worked on Saturday. No Gateman worked on Sunday.

Effective June 9, 1956, the Carrier abolished one relief Gateman position on Saturday and changed the shift schedule of the other relief Gateman. The Agent on duty was assigned to perform the work of the Gateman whose position was abolished.

There is no disagreement that Agents and Gatemen are on separate seniority rosters and that the existing Agreement between the parties does not permit the Carrier to use Agents and Gatemen interchangeably. Article VI of the Agreement, as amended on September 10, 1942, says:

“(Employees With Regular Work Used From One Class to Another Class)

(a) Platformmen, Elevator Conductors, Ticket Examiners and Gatemen, depending upon their qualifications, may be used interchangeably in their own groups and in addition shall constitute the extra list to other classes depending upon their qualifications.”

Nowhere in the Agreement is it provided that Agents and Gatemen may be used interchangeably. There is no denial by the Carrier that the agents at the Grove Street and 33rd Street Terminals perform some work formerly performed by the Gatemen on the days when no Gateman is assigned by reason of the Carrier's order to abolish that position on the days noted above.

The Carrier argues that the Agent was not “required to perform the Gateman's work in addition to his own.” On the contrary the duties of the Gateman are also the duties of the Agent, only the Agent has additional duties. In support of this position the Carrier cites Carrier's Exhibit “B” which shows the alleged respective duties of the Agent and Gatemen as follows:

Agent

Punches Newark Ticket
Releases Newark Gate
Issue Refund Ticket
Make Change
Sells Newark Tickets

Gatemen

Punches Newark Ticket
Releases Newark Gate
Issue Refund Ticket

It is eminently clear, and the Organization raises no question, that the Carrier has every right to increase, reduce and abolish positions as, in its judgment, the needs of the operation requires. The Carrier has every right to abolish Gatemen's positions. But in doing so it has no right to assign the Gateman's work to another employe in a different position and in another seniority list. It should be noted that the position of Agent is in Seniority Roster No. 1 and Gateman is in Seniority Roster No. 2. All of the positions which may be used interchangeably as provided in Article VI of the Agreement are in Seniority Roster No. 2.

The issue then is reduced to the question whether the Agent's duties contain all of the duties performed by the Gateman. If this was true then no Gateman's position vacancy existed and the Organization's claim fails. The Carrier relies primarily on this position and supports it by citing Carrier's Exhibit "B" which allegedly describes the duties of the respective positions and which has previously been noted in this opinion.

The fact, however, is that on June 1, 1956, the General Chairman of the Organization wrote to the Carrier's Superintendent of Transportation that:

"The precise duties of a Gateman clearly defined in the Company's Manual of Instructions issued to all Station Department employes, which manual set forth a clear-cut distinction between Agents' and Gatemen's work."

The reply of the Superintendent of Transportation under date of July 2, 1956, merely states:

"Your claims as presented have no basis and are accordingly denied."

On July 16, 1956, the Organization's General Chairman appealed the decision to the Carrier's General Superintendent and wrote:

"Carrier issues a Manual of Instructions to its Agents, Ticket Examiners and Gatemen, which manual sets forth the duties of the aforementioned classifications wherein it is noted that the duties of agents are far dissimilar from the duties of the Gatemen."

The Carrier's General Superintendent never replied directly to this statement. His letter of July 23, 1956, instead, takes issue with the Organization's interpretation of Article VI. He wrote that: "Article VI (a) in no way or language restricts Agents from performing duties assigned to Platformmen, Elevator Conductors, Ticket Examiners, and Gatemen." Unfortunately, the Manual of Instructions is not in evidence.

Nowhere in the handling of this claim did the Carrier dispute the Organization's assertion "that the duties of agents are far dissimilar from the

duties of Gatemen." Only in the Carrier's Reply to Organization's Statement At Hearing does the Carrier allege "that an Agent performs every single function of a Gateman, and then additional functions." And only then does the Carrier list those functions in Exhibit "B" which is previously set forth in this opinion.

The Rules of Procedure of the Board (Circular No. 1) specifically provides that in the position of Carrier that:

"... all data submitted in support of carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute."

No such data was previously presented to the employees or their authorized representatives. At least there is nothing in the record to show that this was done. On the contrary, the record shows, without contradiction in the original handling of this claim, that the Organization's representation that the duties of Agents and Gatemen were dissimilar was never challenged or denied by the Carrier. The Board can not accept the Carrier's representations, arguments or Exhibit "B" as evidence that the duties of the two positions are similar. Because such duties of Agents and Gatemen are dissimilar, the Carrier improperly directed the Agents to displace the Gatemen.

The Carrier also pleads insolvency and bankruptcy. Neither an insolvent nor bankrupt railroad has any right to abrogate or violate an existing collective bargaining agreement. The courts have repeatedly held that under Section 77 (c) of the Bankruptcy Act that the Carrier must comply with the provisions of the Railway Labor Act. The Carrier in this case never served written notice upon the Organization to change the provisions of the Agreement (Section 156 of the Railway Labor Act). Article VI (interchangeable Assignments), X (Seniority) and V (Overtime) are valid and must be adhered to by the Carrier.

Irrespective of the economies which the Carrier feels are necessary to effectively operate the railroad, and irrespective of what other Employee Organizations may have agreed to, this Board can consider only the evidence in the record and the terms of the Agreement. Such necessary economies and other agreements do not affect Carrier's obligation to adhere to the terms of the Agreement.

The Board concludes:

(1) The Carrier violated the agreement between the parties when it assigned Gateman's work to the Agent at Grove Street Station, New Jersey on Saturdays, Sundays and holidays.

(2) The Carrier violated the Agreement between the parties when it assigned Gateman's work to Agent at 33rd Street, New York City on Saturdays.

(3) The Carrier be required to pay:

(a) the senior idle extra employee a day's pay on Sunday, June 3, 1956, and on each Saturday and Sunday thereafter for as long as the Carrier continued to violate the Agreement as noted in (1) above. In the absence of an

available extra employe, on any Saturday or Sunday, to pay the then incumbent of the Gateman's position at the Grove Street Terminal eight hours at time and one-half rate.

(b) the senior idle extra employe a day's pay on Saturday, June 9, 1956, and on each Saturday thereafter for as long as the Carrier continued to violate the Agreement as noted in (2) above. In the absence of an available extra employe, on any Saturday to pay the incumbent of Gateman's position at the 33rd Street Terminal, eight hours at time and one-half rate.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement as set forth in the Board's conclusions. The claim for holiday pay at the Grove Street Station is denied.

AWARD

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.