

Award No. 11660

Docket No. TE-10597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY
(Wheeling and Lake Erie District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District) that:

1. The Carrier violated and continues to violate the parties' Agreement when on April 6, 1956, it declared abolished the Agent-Telegrapher's position at Monroeville, Ohio, without in fact abolishing the work thereof, consolidated the position with the Agent's position at Norwalk, Ohio, who is now required to divide his time between the two agency stations, resulting in R. M. Condon, the regular assigned Agent-Telegrapher at Monroeville being deprived of work to which entitled under the provision of said Agreement.

2. The Carrier shall, because of the violation set forth above, return R. M. Condon to the Agent-Telegrapher's position at Monroeville, Ohio, and,

3. The Carrier shall, commencing sixty (60) days prior to the date on which this claim was filed, compensate R. M. Condon for each day held away from his regular assignment in accordance with the provisions of Rule 11 of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective as to rules February 1, 1952, and effective as to rates February 1, 1951, and as amended. At page 57 (Wage Scale) of the current Agreement are listed, among others, the following positions.

	Hourly Rate
Monroeville....Agent-Telegrapher	\$ 1.746
Norwalk.....Telegraphers 3	1.710
Norwalk.....Agent	1.830

The rates shown above are the basic rates as of February 1, 1951, under the Wage Agreement of March 1, 1951, and are subject to cost-of-living adjustment as provided in that agreement and the wage agreement of March 1, 1951.

claimant shall be paid as provided for in Rule 11 (Diversion rule). The attitude of this Board on the merits of a claim based on such premises is well known. For example, in Award 4576, one of the awards relied upon by the Employees as being an "identical" case, this Board held:

"The record shows that claimants performed no relief work within the purview of Rules 15 and 15 (a) during the period covered by the claim. Consequently, no basis exists for the payment of expenses as provided in these rules."

Note: Rule 15 is similar to Rule 11 in this case.

Claims based on such premises in Award 4580 (also cited by the Employees) were denied by this Board.

Similar contentions were made in Awards 6944 and 6945 and denied by this Board.

For the reasons set forth in this submission, the Carrier maintains that the claim is without merit and should be denied in its entirety.

All that is contained herein is either known by or available to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 6, 1956 Carrier abolished the agent's position at Monroeville, Ohio, and made it a prepay station. The only work remaining at that station "was the handling of the interchange with B & O, the checking of cars and preparation of reports." The time necessary to perform this work, including driving time from Norwalk, averaged approximately one hour a day. Norwalk is four miles from Monroeville.

When Claimant's position at Monroeville was abolished, Carrier changed the Agent's hours at Norwalk, Ohio, from 8 A.M. to 5 P.M. to 7 A.M. to 4 P.M. and directed him to drive to Monroeville each morning to perform the work there required. When that was completed he drove to Norwalk and completed his day's assignment. This schedule was in effect each week Monday through Friday. No claim was presented to Carrier until December 11, 1956 when Petitioner's General Chairman wrote to Carrier's Chief Dispatcher.

Petitioner contends that since work continued to be performed at Monroeville, the Agent's position could not be abolished.

Petitioner argues "that the burden of proof, to justify discontinuance of the position of Agent-telegrapher at Monroeville, is upon the Carrier." Whether this contention is valid is questionable. In Award 11589 (Dorsey) we held that Petitioner had "not proven by a preponderance of evidence, in the record, that a substantial part of the work of the Freight Agent position remained and was performed by clerks after the position has been abolished." The question in this case, however, is moot. The record clearly shows that the position was abolished because there was no longer a need for a full time position at that station.

The Public Utilities Commission of Ohio found as follows:

"The evidence adduced at the hearing including the exhibits, indicates that the volume of freight business at said station is wholly

insufficient to justify the continuation of the involved station as an agency station."

Petitioner says that the above quote from the Commission's order does not identify the station and that Carrier should have introduced in evidence a certified copy of the order. The procedure before this Board is informal. Strict rules of evidence applicable before a court of law do not apply. Throughout the record Carrier refers to the "station" as meaning the Monroeville station. Nowhere does Petitioner categorically deny that such an order was actually entered by the Public Utilities Commission of Ohio or that the above quote is incorrect. Petitioner has access to the public records of the Commission. If the order and the findings are false or incorrect, Petitioner should have presented evidence of that fact. Not having denied Carrier's allegations and having produced no evidence to the contrary, we are obliged to presume them correct.

It is admitted that some agency work continued at Monroeville. Petitioner argues "that the job content of the position of Agent-telegrapher at Monroeville" was not "eliminated or even substantially decreased." In its Ex Parte Submission, Carrier states that agency work at Monroeville, including the time for the round-trip from Norwalk averages about one hour a day. Nowhere does Petitioner challenge this fact. Petitioner could have easily ascertained the amount of work done at Monroeville from the employe assigned to the Norwalk position. The fact is that no claim was presented by Petitioner until more than eight months after the agent's position at Monroeville was abolished.

It is now a well established principle of this Division that a position may be abolished when work of that position has substantially declined. The order of the Public Utilities Commission of Ohio and the other evidence in the record support the fact that agency work at the Monroeville station had substantially declined. An average of one hour of work a day at Monroeville conclusively establishes and shows a substantial reduction of agency work at that station.

There is nothing in the Agreement prohibiting an employe from performing work at two places. Since the position at Monroeville was properly abolished because agency work there was substantially reduced, no provision of the Agreement was violated by assigning the agent at Norwalk to work an average of one hour a day at Monroeville. See Awards 11511 (Stark), 11589 (Dorsey), 11294 (Moore), 10950 (Ray), and others.

Petitioner particularly emphasizes the dissent to Award 11294. We have read both the Award and the comprehensive dissent. A full and complete analysis of all of the Awards cited therein is contained in Award 11294. The dissent reiterates the Organization's original position. We find nothing palpably wrong with Award 11294. There is no reason for us to overrule it.

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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1963.