Award No. 11836
Docket No. TE-10545

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad that:

1. Carrier violated and continues to violate the agreement between the parties when it declared the position of Ticket Agent at Beloit, Wisconsin, to be abolished while the work of the position remained to be performed and required R. A. DeJarlais, regularly assigned telegrapher at West Yard, South Beloit, to perform work of the Ticket Agent on a call basis.

2. Carrier shall be required to re-establish the position of Ticket Agent, Beloit, return the regularly assigned incumbent, M. M. Marske, thereto and pay him for any wage loss plus any expenses incurred; also, any other employes who were adversely affected shall be returned to former positions with pay for any wage loss plus expenses incurred, commencing April 1, 1957 and continuing thereafter until the violation is corrected.

3. Carrier shall be required to compensate Telegrapher R. A. DeJarlais in the amount of the difference between the two hour call payment and eight hours on each day he performs the work of the Ticket Agent commencing April 1, 1957, and continuing thereafter until the violation is corrected.

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

This claim primarily involves the occupants of two positions at two different stations. One is the position of Ticket Agent at Beloit, Wisconsin and the other the position of Telegrapher at West Yard, South Beloit, Illinois.

The position of Ticket Agent at Beloit, Wisconsin is a monthly rated position with assigned hours 11:45 A.M. to 7:45 P.M. M. M. Marske was the regularly assigned occupant of the position and was required to work on the Sunday rest day of the position of a call basis, usually two calls. Effective April 1, 1957 the Carrier declared the position abolished and transferred the work of the position to other employes.

money is remitted. He must maintain the proper tariffs and acquaint his subordinates with all instructions and other relevant matters connected with the sales of tickets. It is his duty to see that the proper charges are made for tickets; that operators or others under his jurisdiction who sell tickets during their tours of duty properly account for tickets disposed of. Daily cash balances must be maintained. At the end of the month, many monthly reports are required and must be in proper balance as to tickets sold, tickets on hand, and monies remitted. Carrier has rules and regulations without end as to the handling of its passenger business. It is the obligation of the agent to see that all functions of his office are carried out in line with such instructions. The mere fact that an operator sells tickets or does "ticket work" does not confer upon him the classification of ticket agent any more than making out a freight bill would bestow upon him the classification of freight agent."

Thus there can be no basis for any attempt by the Employes to allege that the selling of tickets and the performance of related work by Operator DeJarlais, all of which is under the jurisdiction of Agent Lawbaugh, is in violation of Agreement rules.

It may also be that the Employes will allege that vesting the agent with responsibility for the handling of ticket work, because of the agent position not being subject to any rules of the Schedule Agreement, is in violation of the Agreement. In this regard the Carrier directs the attention of your Board to Third Division Award No. 7821. The Opinion of the Board in Award 7821 reads in part as follows:

"Both the positions of Warehouse Clerk No. 2 and Warehouse Foreman are fully covered by not only the Scope Rule but all other rules of the effective agreement. While the position of Assistant Agent was an 'excepted position' within the meaning of Rule 5(b) and 14, such position, that is, Assistant Agent, is clearly subject to and is covered by the Scope Rule. That the Respondent has the right to abolish positions where the work previously assigned thereto diminishes, or ceases to exist, is well settled by prior decisions of this Board. The remaining work of an abolished position must of necessity be assigned to those employes covered by the Agreement. The Assistant Agent here was so covered. The fact that this position was an exempted position in so far as a portion of the rules are concerned in no way affects its coverage by the Scope rule. The work here in question, as it concerned both positions at issue remained within the Scope of the Agreement when it was assigned to and performed by the Assistant Agent, so therefore, no violation of the Agreement occurred."

Also see Awards 8015 and 8215 of this Division.

This claim is entirely without foundation under the Schedule rules and we respectfully request that it be denied.

All data contained herein has been made known to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 1, 1957 Carrier abolished the position of Ticket Agent at Beloit, Wisconsin and assigned the remaining duties and

responsibilities to the Agent. The day operator under his jurisdiction was assigned a call from 6:30 P. M. to 7:30 P. M. daily.

Organization contends that the abolishment of the position and the manner of distributing the remaining work was in violation of the agreement. It asserts that the position of Ticket Agent was only nominally abolished because substantial work of this position remained and was transferred to the Agent on a call basis outside his regular assigned hours. The effect produced was a combination of two positions by unilateral action in violation of the agreement of the parties, particularly Rule 2.

Carrier asserts that declining business justified the elimination of Ticket Agent, that the transfer of the remaining duties to the supervisory agent was its prerogative, and that the operator who performed the work on a call basis had a right to do so since this work was not exclusively reserved to Ticket Agents. The operator, moreover, had done this work before. Carrier also raises a number of jurisdictional and technical points with regard to Claimants' processing and proceeding with the claim on the property level.

We have reviewed the record and are satisfied that Claimants have properly processed their claim in accordance with the rules; therefore, we reject the jurisdictional and technical defenses presented by Carrier.

We concur that the agreement does not preclude Carrier's right to abolish a position if a substantial part of the work has disappeared. The fundamental issue for consideration is whether a substantial part of the work remained after the position of Ticket Agent was abolished. We find from the record that the decrease in ticket revenue at Beloit, Wisconsin necessitated Carrier's elimination of the position of Ticket Agent. The fact that only one hour of work was transferred from the abolished position leads us to conclude that there was not, as Claimants maintain, substantial work remaining sufficient to justify the position of Ticket Agent.

Although we find that Carrier did, in fact, abolish the position and transferred the remaining duties to the operator under the supervision of the Agent, we do not conclude that it follows that a re-classification resulted. The assignment of ticket selling and related clerical work for one hour does not constitute the basis for a re-classification.

Rule 2 (d) which provides that changes in classification of rates of pay can only be brought about by agreement between Carrier and Organization does not apply. There was no need to negotiate since the operator continued to perform his own duties under the same classification as day operator with the rate of pay of that position. He was compensated for the additional one hour service assigned him on a call basis. He did not perform the work of two full-time positions; he did not do a subsbtantial part of the work of the eliminated Ticket Agent; he only worked one additional hour per day. The agreement does not preclude him from performing this additional assignment on a call basis.

We find that under the agreement there is no obligation for Carrier to compensate the Agent on an eight-hour basis when he was assigned only one-hour service of the abolished position. Furthermore, Carrier has no responsibility to re-establish the position of Ticket Agent at Beloit and to return Claimant, M. M. Marske, to this position. We hold that Carrier did not violate the agreement of the parties and therefore, the claim is denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1963.

DISSENT TO AWARD 11836, DOCKET TE-10545

This Award makes a mockery of the years of experience and co-operation between the parties in arriving at the classification and various other rules which spell out the intent to keep separate the numerous positions affected by such rules.

The Award is so patently and absurdly erroneous that detailed comment would be superfluous.

I dissent.

J. W. WHITEHOUSE
Labor Member