

Award No. 12486

Docket No. TE-11199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the Telegraphers' Agreement between the parties when on December 31, 1957 without negotiation or agreement it abolished the full time positions of agent-telegrapher at Tell City, Indiana and Cannelton, Indiana and improperly joined these two positions into one position of agent-telegrapher and thereafter required the regular assigned employe of the agent-telegrapher position at Tell City-Cannelton, Indiana to perform dual agent-telegraphers' service, part time at Tell City, Indiana and part time at Cannelton, Indiana daily except Saturday, Sunday and holidays.

2. The Carrier shall restore the agent-telegrapher positions at Tell City, Indiana and Cannelton, Indiana to their former individual status.

3. Carrier shall compensate E. T. Survant, regular assigned agent-telegrapher at the joint Tell City-Cannelton agency eight (8) hours' extra pay at his Tell City-Cannelton rate \$2.31 per hour in addition to his regular day's pay for January 2, 1958 account filling two positions on the same date and for each and every day hereafter this violative act continues; also J. J. Barrett and all other employes adversely affected by this violative act shall be reimbursed for all monetary loss of wages and money spent in transportation of themselves, families and effects.

4. Carrier shall compensate Mr. Survant \$5.00 per day expense money for January 2, 1958 and for each and every day hereafter that he goes to Cannelton, Indiana to perform agent's duties there.

EMPLOYES' STATEMENT OF FACTS: In the Agreement effective September 1, 1949, at page 93, the St. Louis-Louisville Division shows the following negotiated positions with the negotiated rate of pay:

"Tell City	Agent-Telegrapher	\$162.00	\$243.00
Cannelton	Agent-Telegrapher	153.50	230.00"

The Carrier may in the interests of economy and efficiency of its operations abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the collective agreement. However, when doing so, the work of the positions abolished must be assigned to and performed by the class of employees entitled thereto.

From an analysis of the record the authorities cited and the reasons stated herein, we conclude that the claim should be denied."

CONCLUSION

Carrier submits it has proven that:

(a) The effective Telegraphers' Agreement has not been violated as alleged and the claim and demand are without any basis whatsoever.

(b) The point here at issue has long since been conceded by the ORT.

(c) The Board is without authority to do what is here demanded.

(d) Claim identical in principle has heretofore been denied by the Board.

Part 2 of the claim and demand should be dismissed by the Board for want of jurisdiction, as the Board lacks authority to do what is there demanded. The remainder of the claim should be denied, as it is unsupported by any provision within the four corners of the Telegraphers' Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of Agent at Cannelton, Indiana, was originally abolished effective December 31, 1956, when the Agent retired. Tell City and Cannelton, Indiana are approximately three miles apart and the Carrier, based on investigation, curtailed service at the Cannelton location by instructing the Agent at Tell City to work at Cannelton from 1:00 P.M. to 3:00 P.M. daily except weekends and holidays. He received his regular pay, the higher rate of the two positions and was reimbursed for travel expenses.

Full service at Cannelton was restored on March 18, 1957, with the position of Agent-Telegrapher restored pursuant to an order issued by the Public Service Commission of Indiana. On November 22, 1957, said Commission approved the Carrier's petition to curtail the agency service at Cannelton and provide limited service as originally instituted by the Carrier, based upon its findings.

On December 20, 1957, a bulletin was posted "abolishing" the two former positions and simultaneously, a bulletin was posted establishing a "new position" of Agent-Telegrapher at Tell City and Cannelton. This was assigned to the senior applicant, effective January 2, 1958, and he is presently reimbursed by the Carrier for travel expenses between the two communities.

Petitioner's claim as filed with the Carrier was that the Carrier's abolishment of the full time positions of Agent-Telegrapher at Tell City, Indiana and Cannelton, Indiana, and the improper joinder of said positions into one position encompassing dual Agent-Telegraphers' service was a violation of the Telegraphers' Agreement. In the Claim, Petitioner did not cite any particular

provision of the Agreement as having been violated. However, throughout the processing of the claim on the property and after the initial denial of the claim, Petitioner argued that the Carrier failed to observe the requirements of the Railway Labor Act, Rule 44 of the Agreement and other provisions thereof by instituting said changes unilaterally. This position primarily is based upon the contention that the Carrier neither abolished the positions nor created a new position, but in fact, consolidated the two separately listed positions. Petitioner cites numerous Awards by this Division concerning the meaning of "abolishment" in the particular context of each situation, which we have carefully reviewed. (Eg. Awards 299, 556, 3655, 3884 and 11753.)

We also have examined prior awards cited by Petitioner in support of the premise that a joint agency may not be substituted ex parte for two agencies if such action is contrary to the provisions of the applicable Agreement, and conclude that they are readily distinguishable from the instant dispute. (Eg. Awards 3659, 4576 and 5384.)

The fundamental issue before us is whether or not under the existing Agreement and the confronting facts as we have construed them, the Carrier had the right to abolish two positions of Agent-Operator, consolidate the remaining functions of both positions and establish a single new position of Agent-Telegrapher without obtaining prior agreement from the Petitioner through negotiation.

As we review the record, the work at Cannelton had declined to a substantial degree leaving only a small volume of business at that station. The Carrier in its opinion, was compelled to take the action it did for reasons of efficiency and economy, which was approved and authorized by the Indiana Public Service Commission. Petitioner has offered no evidence to refute this contention.

Although a careful study of the multitude of cases involving the rights of carriers to abolish positions are at substantial variance, in the absence of any rules of Agreements precluding such abolishment, we have concluded in the present dispute that it was the prerogative of management to do so, as a substantial part of the work had disappeared. (Awards 11660, 11511 and 11589.)

As a matter of procedural mechanics, the Carrier, under the language contained on page 100 of the Agreement, first abolished the existing positions and then established one position to work at the two locations. We concur in the contention that as a practical matter, the result would have been the same had only one position been abolished and the remaining Agent assigned to perform work at both locations. Any distinction would be an exercise in semantics. (Award 12377.)

We have found that a substantial portion of the work at the Cannelton station no longer exists and nowhere in the Agreement is there a provision either approving or prohibiting the establishment of a consolidated position. We have only the Petitioner's basic contention that since work remains to be performed at Cannelton, the Agent's position cannot be abolished without negotiation and agreement between the parties. In the absence of any expressed or implied prohibition in the Agreement, we find most persuasive in this dispute those awards which uphold the right of the Carrier to have an employe perform work at two separate locations as long as he goes on and off duty at the same location which the Agent did in this case. (Awards 6944, 6945, 8428, 10950 and Award 39 of Special Board of Adjustment No. 259 — Telegraphers vs. New York Central.)

The burden of proof is Petitioner's to show that Carrier's actions were in violation of some provision of the Agreement. The Petitioner has failed by a preponderance of the evidence to meet its burden. We will, therefore, deny the claim.

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 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 denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of May 1964.

DISSENT TO AWARD NO. 12486, DOCKET NO. TE-11199

This Award is erroneous for at least two important reasons: First, in thinly disguised form, it embraces the court doctrine of "*De minimis non curat lex*", which we have often said is not applicable to the type of action referable to this Board; and, second, it substitutes the Referee's idea of practicality for the clear provisions of the Agreement. Those provisions at page 100 of the Agreement leave no room for "an exercise in semantics" nor provide a reason other than those stated for changing the agreed list of positions.

A position is not properly abolished merely because its work has diminished or because it would be cheaper to change the working conditions of another position, all without negotiation and agreement.

The action complained of violated not only the Agreement but the Railway Labor Act as well. For these reasons the claim should have been sustained.

**J. W. Whitehouse
Labor Member**