

Award No. 12596

Docket No. TE-11114

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Lines West of Buffalo), that:

CLAIM NO. 1

1. The Carrier violates the terms of the Agreement, particularly Mediation Agreement Memoranda of September 21, 1950, by failing and refusing to fill the position of Ticket Agent at Youngstown, Ohio, by selecting a qualified Telegrapher Agreement Employee.

2. The position of Ticket Agent at Youngstown, Ohio, which became vacant on January 3, 1956, shall now be filled in compliance with the requirement of the Agreement.

3. The employee who is selected and appropriately assigned to the position shall be paid the difference, if any, between what he would have earned had he been placed on said Ticket Agent position, and what he has earned during the period beginning December 2, 1957, and continuing until actually placed on said position; and further,

4. Any other employee or employees on the Telegraphers' rosters who have suffered loss of earnings as a result of the Carrier's non-compliance with the Agreement regarding the filling of the Ticket Agent position at Youngstown, Ohio, shall be compensated in the amount of such loss during the period aforesaid.

CLAIM NO 2

1. The Carrier violates the terms of the Agreement, particularly Mediation Agreement Memorandum of September 21, 1950, when effective Tuesday, March 4, 1958 it abolished the position of Ticket Agent, South Bend, Indiana, without abolishing the work.

2. M. C. Aldrich be restored to the position of Ticket Agent at South Bend, Indiana, from which he was improperly displaced, and paid the difference, if any, between what he would have earned had he not been displaced and what he has earned during the period beginning March 4, 1958, and continuing until restored to the position of Ticket Agent at South Bend and reimbursed for all expenses he has incurred from March 4, 1958, until restored to the position.

3. In the event M. C. Aldrich, for any reason, does not return to the position of Ticket Agent at South Bend, Ind., the position shall be filled in compliance with the requirement of Article 27 (i) 3 of the Telegraphers' Agreement and Mediation Agreement of September 21, 1950; and the employee who is selected and appropriately assigned to the position shall be paid the difference, if any, between what he would have earned had he been placed on said Ticket Agent position and what he has earned during the period beginning March 4, 1958 and continuing until actually placed on said position; and further,

4. Any other employee or employees on the Telegraphers' Rosters who have suffered loss of earnings as a result of the Carrier's non-compliance with the Agreement regarding the filling of the Ticket Agent position at South Bend, Indiana shall be compensated in the amount of such loss during the period aforesaid.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective January 1, 1955, as amended.

At Page 60 of this Agreement, preceding the Wage Scale, is a "Key to Classifications of Positions" listed in the Wage Scale. Among the symbols listed in the "Key" are "B"—Ticket Agent, and "N"—Subject to Article 27 (i) 3 only. The classification of the positions figuring in this dispute are indicated by the symbols "B" and "N".

At Page 63 of the Agreement, Wage Scale, under the designation of Seniority District No. 2 is listed the position at Youngstown, Ohio, covered by the scope of the Telegraphers' Agreement, figuring in Claim No. 1 of this dispute. The listing appears as follows:

Location	Shift	Classifi- cation	Hourly Rate	Monthly Rate
Youngstown		B-N		\$455.00

In addition to the Ticket Agent's position at Youngstown there was on the date of its abolishment a Freight Agent's position at a separate facility from that of the Ticket Agent's position, an excepted position not covered by any agreement.

The Ticket Office is located in the Passenger Depot. There (in the passenger depot) subject to the supervision of the Ticket Agent, is a number of ticket clerks covered by another collective agreement.

The population of Youngstown (World Almanac 1958) is 168,330.

The industrial background of Youngstown is well known and will not be described here.

5. This claim is without merit and should be denied.

OPINION OF BOARD: This dispute involves two claims, one arising at Youngstown, Ohio and the second at South Bend, Indiana.

On January 3, 1956 the ticket agent position at Youngstown, Ohio was abolished and consolidated with the position of freight agent. The Claimants contended that the ticket agent position should have been filled by a properly qualified Telegraphers' Agreement employee in accordance with Article 27 (i) 3, and the Mediation Agreement of March, 1950, as work of the abolished position remained and was being performed by persons outside the Telegraphers' Agreement. The position was also designated as an N position in the Telegraphers' wage scale thus incorporating the position into the Agreement.

At South Bend, the position of ticket agent was abolished on March 4, 1958 and the position of freight agent was extended to include the work of the ticket agent position. The prior occupant of this position came from the ranks of the Telegraphers' Agreement, whereas the Youngstown occupant of the position came from the ranks of the Clerks' Agreement.

The Claim is for the restoration of the two ticket agent positions as required by the above cited rules and mediation agreement and placed under the Telegraphers' Agreement.

Rule 27 (i) 3 is as follows:

"When a vacancy occurs on any of the positions designated as 'J' or 'N' in the wage scale, it will be filled by appointment of a properly qualified telegraphers' agreement employee who has at least 5 years seniority, who may be selected from any of the 10 Seniority Districts listed in Article 24 (i)."

This rule was brought into the Telegraphers' Agreement as a result of the Mediation Agreement of 1950.

The Claimants contended that the Mediation Agreement of 1950 and Article 27 (i) 3, brought the ticket agent positions at Youngstown and South Bend, within the Scope of the Telegraphers' Agreement under a restrictive proviso of Article 27 (i) 3.

"* * * by appointment of a properly qualified telegraphers' Agreement employee who has at least 5 years' seniority, who may be selected from any of the 10 Seniority Districts listed in Article 24(i)."

That the purpose of Article 27 (i) 3, was to place this position into the agreement which was done. The position was also designated as an N position in the wage scale and monthly rated for the purpose of bringing the position into the agreement. The work of the ticket agent continues to exist at these locations and such work is being performed by the freight agent or others not covered by the agreement.

Thus the Agreement had been violated by a failure to fill the position with an employee subject to the Telegraphers' Agreement.

The Carrier contended that Article 27 (i) 3, only covered the filling of vacancies, and that the Carrier was not restricted in any way from abolishing

any of these positions, combining them, or refraining from filling them as the positions were not covered by the Telegraphers' Agreement according to Article 27, which reads as follows:

"Monthly rated positions designated in the wage scale as 'N' and referred to in Article 27 (i) will not be required to perform telegraphers' agreement work; when vacancies occur, will not be bulletined." (Emphasis ours.)

The positions were monthly rated in the wage scale and subject to 27 (i) 3 only. Furthermore, the positions were specifically excepted from the work of the telegraphers' agreement and it was not a violation of the agreement to transfer work from one excepted position to another excepted position. The reason for the rules so written was due to the fact that the positions were supervisory. The Mediation Agreement dated September 21, 1950 provided in item 7, that:

"Monthly rated freight agents at Painesville, Adrian, Sturgis, Goshen, Gary, LaPorte, Findlay, Bowling Green and Bucyrus, Ticket Agents at South Bend and Charleston, Asst. Ticket Agent at Erie, Pa., Pass. & Ticket Agent at Youngstown and Office Managers at 'SC' Chicago and 'ON' Cleveland, designated in the Wage Scale as 'N' and referred to in Article 27 (i) will not be required to perform Telegraphers' Agreement work, when vacancies occur, will not be bulletined but will be filled by Carrier selecting qualified Telegraphers' Agreement employees." (Emphasis ours.)

As a result of Articles 27, 27 (i) 3, and the Mediation Agreement it was not intended to, nor did the language have the effect of constituting a guarantee against abolishment of any of the "N" positions when the services of the position were not needed. Article 27 (i) 3, merely specifies that when a vacancy occurs on an "N" position the Carrier will appoint a properly qualified Telegraphers' Agreement employee. If it was intended that the position must be filled when vacated the parties would have so worded Article 27 (i) 3. That the Article only stated the manner of filling the position which was to be by a properly qualified Telegraphers' Agreement employee. Furthermore, the Carrier was not required to continue these positions when the work no longer existed than it would be to continue any other position where there is insufficient work to warrant it. No rule of the Agreement prohibits such action. Thus, in light of the above articles of the Agreement there was no violation of the Agreement.

The question to be determined in this dispute is: Did Article 27 (i) 3, and the Memorandum of Agreement place the position of freight Ticket Agent at Youngstown and South Bend, designated as "N" in the wage scale, into the Telegraphers' Agreement?

This Board is of the opinion that the answer to this question is no. Article 27 reads in its pertinent parts:

"Monthly rated positions designated in the Wage Scale as 'N' and referred to in Article 27 (i), will not be required to perform Telegraphers' Agreement work."

These positions in dispute are monthly rated in the wage scale and they are the positions referred to in Article 27 (i). Furthermore, they have been

specifically exempt from the requirements of performing Telegraphers' Agreement work by Article 27. Thus if the holder of the position is not required to do telegraphers' work the position cannot come under the provisions of the Telegraphers' Agreement. An examination of Awards 1296, 2611 and 5723 offered in the submission by the Claimant are all supported by the findings that the position was subject to the Agreement in effect, whereas herein, Article 27, specifically excepts the position from performing work under the Telegraphers' Agreement.

An examination of the submission fails to reveal that the Claimants by a preponderance of the evidence proved that the impact of Article 27 was to place the positions under the Telegraphers' Agreement. In fact, the submission is silent on what impact Article 27 has on the requirement that positions must be subject to agreements in order for the Agreement to be used to enforce the benefits derived thereunder.

Thus we are of the opinion that under Article 27, the positions in this dispute, when not required to perform the work of the Agreement are not subject to the Agreement.

Article 27 (i) 3, applies to the filling of vacancies subject to Article 27. When these positions are to be filled the qualifications of the person who is to fill the position are enumerated. In light of Article 27, Article 27 (i) 3 can require no further obligation on the Carrier.

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 the 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 2nd day of June 1964.