

Award No. 12660

Docket No. TE-11492

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland and Seattle Railway that:

1. Carrier violated and continues to violate the agreement between the parties when, effective August 16, 1958 at Linnton, Oregon, it changed the classification and rate of pay of the position of Agent-Telegrapher and transferred the work to employes not covered by the agreement.

2. Carrier shall be required to restore the proper classification and rate of pay to the position and the work to employes under the agreement and compensate K. M. Eller and R. L. Burkett, or their successors, at the proper rate of the Agent-Telegrapher position beginning August 16, 1958 and continuing thereafter until the violation is corrected.

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

Linnton, Oregon is a station on this Carrier's lines. Prior to August 16, 1958 there were three positions under the agreement at this location, Agent-Telegrapher and two telegraphers.

The Agent-Telegrapher exercised supervision of all the work at the station in his capacity of Agent. He was the Carrier's representative in dealing with patrons. In addition to these two primary functions of an Agent, he performed a considerable portion of the agency or station work. He posted the station cash book; prepared "pro" sheets; made the payrolls; handled all inbound freight bills, rates and abstracts; mailed all bills for collection; supervised rates and routing on all shipments; ordered all supplies; and made all remittances.

Indeed, Petitioner's own description of the job content of the former position of Agent definitely disproves the claim that this position was reclassified. An analysis of Petitioner's statement as to the job content of the two telegraphic positions remaining in the Linnton office, when compared with the duties he shows for the former position of Agent, will show beyond doubt that there is no relation between the position abolished and either of the two positions remaining. What actually occurred on August 16, 1958 was that Respondent abolished two positions coming within the scope of the telegraphers' agreement (the Agent and one Telegrapher) and simultaneously created a new position of Assistant Agent Telegrapher in conformity with Rule 2 (b).

But, even viewing Petitioner's reference to Rule 2 (c) in the most favorable light, the most that can be said is that Respondent reclassified one of the telegrapher positions to Assistant Agent-Telegrapher with no change in rate of pay. Even if your Honorable Board were to find that Respondent's action had this effect, still that finding would obviously lend no support to the instant claim, which is that the station accounting work for the Linnton district be returned to the Linnton office and the position of Agent be restored in that office.

Respondent has shown:

(1) Its action in transferring the station accounting work from the Linnton office to the Hoyt Street office was in all respects in conformity with uncontested past practice;

(2) The rules of the telegraphers' agreement on this property, and specifically Rule 2 (c) thereof cited by the Petitioner, contain no prohibition against the action taken by Respondent; and

(3) Awards of the Third Division have consistently upheld Management's right in the interest of efficient and economical operation to take such action, absent a specific prohibition in the telegraphers' working agreement (Award 5803 and awards cited therein).

Respondent, therefore, submits that the instant claim is wholly without support and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to August 16, 1958 Carrier maintained an agent, two telegraphers, and two clerks at Linnton, Oregon. Conferences were held on June 25 and August 1, 1958 relative to proposed changes at the Linnton station. Although the employees expressed opposition to the proposed transfer of work from Linnton under the jurisdiction of the agent, Carrier made the transfer of work to the Portland office and to the Willbridge Yard office which are under the supervision of employees outside of the Agreement. Effective August 16, 1958 the Linnton station carried on with a reduced force consisting of an assistant agent telegrapher and a first telegrapher. The positions of the two clerks and that of the second telegrapher were eliminated.

Organization makes claim that Carrier violated the Agreement by reclassifying the position of agent telegrapher to that of assistant agent telegrapher with a decreased rate of pay and by transferring the work to other employees not covered by the Agreement. It maintains that this change was made by unilateral action contrary to Rule 2 (c).

Carrier takes the position that it did not make a reclassification but created a new position, that of assistant agent telegrapher, in accordance with Rule 2 (b). It supports its action with the argument that the assistant agent telegrapher performs duties different from those of the eliminated agent position. It also maintains that the work transferred out does not belong exclusively to the agent; and consequently, it had the right to assign these duties to supervise outside the Agreement.

The central issue in this dispute is whether or not the position of assistant agent telegrapher is a reclassification or a newly created position.

After the changes of August 16, 1958 Linnton station continued to service as an agency station. Despite the change in title, the assistant agent telegrapher exercised supervision of the work at the station. He was Carrier's representative in dealing with patrons just as the agent formerly performed in that capacity. Carrier's contention that the eliminated position of agent is distinct from that of agent telegrapher and that the agent at Linnton did not perform telegrapher's work is not consistent with the position it took in Award No. 11099. In that award one of the Claimants, Mr. K. M. Eller, who is also involved in the instant dispute was recognized by Carrier as an agent telegrapher at the same Linnton station. The maintenance of Linnton as an open station continued to require the supervisory duties of an agent telegrapher in spite of the discontinuance of that position and the transfer of some duties to employees not under the Agreement. The change in title to assistant agent telegrapher with reduced pay did not alter the fact that this employee's duties in terms of the station's task remained basically the same as those he had performed before August 16, 1958. Accordingly, Rule 2 (b) upon which Carrier relies is not applicable since this rule is effective when a new position is established.

Rule 2 (c), however, is in point because it treats with reclassification of positions. As in Awards No. 5171 and No. 8486 which involved a similarly worded rule of other agreements, we find that a change in position cannot be made without consent of both parties resulting from a conference.

The Agreement was violated.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12660,
DOCKET TE-11492
(Referee Engelstein)**

In this award the Referee has significantly refused to rule that any transfer of work which took place here was in violation of the controlling Agreement. He has limited his ruling to this specific question: Is the position of Assistant Agent-Telegrapher at Linnton merely a continuation of the former Agent position and hence a re-classified position under Rule 2 (c) rather than a new position under Rule 2 (b)? He answers this question in the affirmative on the basis of this erroneous finding of fact:

". . . The change in title to assistant agent telegrapher with reduced pay did not alter the fact that this employee's duties in terms of the station's task remained basically the same as those he had performed before August 16, 1958. . . ."

The record contains an admission of the Petitioner that the duties of the Agent position before August 16, 1958, and the duties of the Assistant Agent-Telegrapher thereafter were as follows:

Agent-Telegrapher	Assistant Agent-Telegrapher
Posting station cash book.	Handle all telegraph communications.
Preparing "Pro" sheets.	Copy of train order and other train movement work with train dispatcher.
Preparing payrolls.	Relay trackmen's line up to section men and motor car operators.
Handling all inbound freight bills, rates and abstracts.	Prepare the following reports:
Mailing all bills for collection.	Pick up and Forward Report.
Supervise rates and routing on all shipments.	Over short and damage report.
Order and keep stationery supplies.	Switch settlement statements.
Make all remittances.	Switching freight bills.
Working with shippers and public.	Empty tank car movements.
	Per-Diem report.
	Station stationery and supply requisitions.
	General station duties such as cleaning station, answering public phone, etc.

These admitted duties of the two positions are categorically different, and the Referee's finding that the employees' duties remained "basically the same" is manifestly contrary to the facts of record.

The only other reason tendered in the award for concluding that the Assistant Agent-Telegrapher position is a continuation of the former Agent position is the statement that:

". . . Carrier's contention that the eliminated position of agent is distinct from that of agent telegrapher and that the agent at

Linnton did not perform telegrapher's work is not consistent with the position it took in Award No. 11099. In that award one of the Claimants, Mr. K. M. Eller, who is also involved in the instant dispute was recognized by Carrier as an agent telegrapher at the same Linnton station. . . ."

Since the Employees admit in the record that the duties of the Agent position before August 16, 1958 did not include any communications work, we fail to see how Carrier's prior reference to the position as an Agent-Telegrapher position could have any bearing whatever on the case. The sole purpose for this reference to the position taken by Carrier in Award 11099 appears to be to cast a cloud of inconsistency over the Carrier. It is therefore interesting to note that the same award casts the same cloud of inconsistency over the Petitioner, for in that case (Statement of Claim) the Employees referred to the position as an "Agent position" and not as an Agent-Telegrapher position.

The award is erroneous and we dissent.

G. L. Naylor
R. E. Black
R. A. DeRossett
W. F. Euker
W. M. Roberts