

Award No. 13760
Docket No. TE-12328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that:

1. The Carrier violated the terms of the agreement between the parties when, on November 9, 1959, it unilaterally declared abolished the position of first trick telegrapher-cashier at Pomona, California, and removed worked embraced by this, and by the newly classified agent-telegrapher positions from the agreement, assigning same to a newly established clerk's position.
2. The work comprising the first trick telegrapher-cashier and the agent's positions at Pomona, California, shall be restored to the agreement and to the employees (telegraphers) to which it traditionally and contractually belongs.
3. Carrier shall compensate J. R. Calinsky on basis of eight hours' pay at the rate of the first trick telegrapher-cashier position at Pomona, California, each work day for any loss in wages, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the first trick telegrapher-cashier position at Pomona, California, plus actual expenses incurred on each day he works at a station other than Pomona, California; and H. E. Ranstead on basis of eight hours' pay at the rate of the second trick telegrapher-clerk position at Pomona, California, each work day for any loss in wages, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the second trick telegrapher-clerk position at Pomona, California, plus actual expenses incurred on each day he works at a station other than Pomona, California; and A. Guerra on basis of eight hours' pay at the rate of the agent-telegrapher position at Olive, California, each work day for any loss in wages, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the agent-telegrapher position at Olive, California, plus actual expenses incurred on each day he works at a station other than Olive, California.

to meet their burden of proof of an agreement violation and it is wholly without support under the agreement rules, and should be either dismissed or denied for the reasons previously set forth herein.

OPINION OF BOARD: The present claim stems from a number of changes that were made at Carrier's Pomona, California, Station on November 9, 1959. Effective that date, the position of Agent was reclassified to Agent-Telegrapher while the Telegrapher-Cashier position was reclassified to Agent-Telegrapher while the Telegrapher-Cashier position was abolished and the new position of Cashier established. The position last mentioned is covered by the Clerks' Agreement, whereas the Agent, Agent-Telegrapher and Telegrapher-Cashier are under the aegis of the Telegrapher's Agreement.

Concurrent with these changes, all telegraphic and train order work of the Telegrapher-Cashier was reassigned to the Agent-Telegrapher. The clerical duties of both the Agent and the abolished position were transferred to the newly created Cashier position.

The theory of the claim is that Carrier violated the Telegraphers' Agreement when it shifted work of the Agent and Telegrapher-Cashier positions from the Telegraphers' Agreement to the Clerks' Agreement.

Substantially the same situation, contentions and issues were considered by this Division in Awards 13074 and 13075. Those awards concern the same Agreement and parties as are now before us and, as limited to the specific facts in question, appear to be sufficiently sound for us to follow in the present case, even if we might have arrived at a different result had the claim reached us as a matter of first impression.

Here, both telegraphic and clerical duties of the abolished position remained to be performed at Pomona after November 9, 1959, and this case must be distinguished from those cases where the primary telegraphic work had disappeared. There was no overlap of the assignments of employees performing telegraphic duties, since the Agent performed none and such duties existed only on the positions of the first trick and second trick telegrapher-cashiers. (Cf. Awards 5, 6 and 7 of Special Board of Adjustment 174, which concern the Clerks' Agreement.) It is significant that Carrier went so far as to create a new Clerk's position to absorb the clerical duties of the Agent and of an abolished position whose primary telegraphic functions had not disappeared.

In the light of these circumstances, we will be guided by Awards 13074 and 13075, and will find that a violation has occurred. A contrary holding would tend to undermine employee security and disturb labor relations stability.

Paragraphs (1) and (2) of the claim will be sustained in their entirety, while paragraph (3) thereof will be sustained insofar as compensation of the Claimants for eight hours' straight-time pay each workday for any loss in wages is concerned. This, of course, means that all earnings realized from any source during the claim period must be deducted from the compensation due Claimants. That part of the claim that relates to overtime and expenses is denied for reasons mentioned in Awards 13074 and 13075.

It should be noted that the Clerks have been afforded due opportunity to be heard, pursuant to Section 3, First (j) of the Railway Labor Act.

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

That the Agreement was violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1965.