

Award No. 13762  
Docket No. TE-13407

**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**  
(Eastern Lines)

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

1. The Carrier violated the terms of the Agreement between the parties when, without negotiation or agreement, on November 21, 1960, it unilaterally declared abolished the 9:30 A.M. to 5:30 P.M. position of telegrapher-clerk and reclassified the position of agent to agent-telegrapher at Iola, Kansas, and assigned work of the agent and telegrapher-clerk to a clerical position not covered by the Telegraphers' Agreement.
2. The work comprising the position of agent and telegrapher-clerk at Iola, Kansas, shall be restored to the Agreement.
3. For extra employees R. L. Weaver, D. E. Hamman, J. R. Anderson, W. R. Lyman and D. M. Wright, the Carrier shall be required to compensate the senior employee named above who is idle for eight hours' pay at the rate of the first shift telegrapher-clerk position at Iola each work day beginning November 21, 1960.

**EMPLOYEES' STATEMENT OF FACTS:** Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

This dispute concerns the Carrier's unilateral abolishment of the first shift telegrapher-clerk position and reclassification of the agent's position to agent-telegrapher, without conference or negotiation, at Iola, Kansas, and the transfer of work formerly performed by the agent and telegrapher-clerk to a clerical position, not covered by the Telegraphers' Agreement.

Prior to November 21, 1960, the station force at Iola was:

the occupant of the position of Station Clerk. To that extent the claim is allowed."

See also Awards 5196, 5431, 5572, 5790, and many others.

The Employees have, in their handling of the claim in the instant dispute with the Carrier, presented no evidence to show that clerical employees have devoted eight hours of clerical work alleged to have formerly been performed by telegraph service employees on "the first shift telegrapher-clerk position at Iola each work day, beginning November 21, 1960."

Moreover, even if employees subject to the Telegraphers' Agreement had had an agreement right to the work claimed in the instant dispute, and the Carrier has proved conclusively that they did not, the Petitioner has not and cannot show that any of the named extra employees were either qualified to perform the work or would have been available. In this connection, the Carrier also directs the Board's attention to the conclusions expressed by the majority in recent Award No. 10036 of the Third Division in support of their denial of a claim for wage loss sustained by an extra or unassigned employee who had been dismissed, but whom the majority had held should be reinstated to service:

"The Claimant must, therefore, be reinstated to the service of the Carrier with seniority and all other rights unimpaired. However, no back compensation will be paid the Claimant because he was an unassigned employe on the Extra Yard Clerk Board and one cannot determine with certainty where, when, and how much he would have worked. In such situations, the question of physical fitness and ability to work must be considered in relation to jobs available. Furthermore, there was no proof offered as to the Claimant's compensatory loss." (Emphasis ours.)

In conclusion, the respondent Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Telegraphers' Agreement and should, for the reasons stated herein, be either dismissed or denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case concerns a transfer of work at Iola, Kansas. It is somewhat similar to the situations this Board had occasion to pass upon in Awards 13074 and 13760 involving the same Agreement and parties. In each instance, a telegrapher-clerk position was abolished, an agent position reclassified, and clerical duties shifted from the Telegraphers' Agreement to the Clerks.

Nevertheless, there are several critical points of distinction. In the two awards cited above, the Carrier established a new clerk's position to absorb the clerical duties of both the abolished and reclassified telegrapher's positions and the net effect of the changes was the loss of one position to the telegraphers and the concurrent gain of a position by the clerks. In the present case, there is persuasive evidence that the volume of work at Iola had decreased, and this is augmented by the undisputed fact that no new clerical position was necessary or added to handle the clerical duties of the telegrapher positions affected by the changes. It further appears that no duties of the abolished position were removed from the Telegraphers' Agreement. There is no valid basis, so far as the record shows, for questioning the good faith of Carrier's failure to establish a new clerk's position in this case.

In view of these material differences, we do not consider that Awards 13074 and 13760 are controlling here, and since we are not satisfied that Petitioner has established, in the face of Carrier's assertions and facts to the contrary, that the clerical work in question belonged to the telegraphers by practice or tradition, the claim will be 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 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 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 26th day of July 1965.