Award No. 14097
Docket No. TE-13234

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when on January 4, 1961, acting unilaterally and arbitrarily, it reduced the hourly rate of pay for the position of Agent-Telegrapher (or Agent) at Byronville, Georgia, and established a lower rate of pay for such position than that provided in the Agreement.

2. Carrier shall be required to restore rate of pay for the position of Agent-Telegrapher (or Agent) at Byronville, Georgia, to the rate prevailing prior to January 4, 1961, together with any increase in rate of pay applicable thereto.

3. Carrier shall be required to compensate each occupant of the position of Agent-Telegrapher (or Agent) at Byromville, Georgia the difference between the amount paid and the amount agreed to be paid for such position, from January 4, 1961, until such violative practice is discontinued.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939 as supplemented and amended, is available to your Board and by this reference is made a part hereof as though set out herein word for word.

Byromville, Georgia, is located on the Western Division of the railroad, formerly the Atlanta, Birmingham & Coast Railroad, which was purchased by the Atlantic Coast Line Railroad Company pursuant to approval and authority granted by the Interstate Commerce Commission.

On January 1, 1946, the Agreement between the Atlantic Coast Line Railroad Company and its employes represented by this Organization became effective on the Western Division. Pertinent parts of the agreement effecting this, read as follows:

OPINION OF BOARD: Carrier, by bulletin dated December 29, 1960, announced that its agency at Byromville, Georgia, and the position assigned to it would be reclassified from telegraph to non-telegraph beginning on January 4, 1961. Carrier reduced the rate of pay for the position effective January 4th. These actions were taken by Carrier unilaterally and without prior negotiation with the Organization.

Organization claims that Carrier violated the Agreement and points to Articles 2(a) and 21:

"ARTICLE 2. CLASSIFICATION

(a) The entering of employes in positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established."

"ARTICLE 21.

CHANGES IN RULES OR WAGE SCALE

Should either party to this agreement desire to change or modify any part thereof, thirty (30) days' notice in writing shall be served upon the other party stating the change or changes desired, and conferences shall be held within the thirty (30) days provided in the notice, unless another date is mutually agreed upon."

Organization cites Award 8036 between the same parties as being determinative.

Carrier argues that in reclassifying the agency and the position, it abolished the Agent-Telegrapher position which had existed until then, and established a new position of Agent; that it set the rate from the new position in accordance with Article 7 of the Agreement which it says is controlling:

"ARTICLE 7. NEW POSITIONS

When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district. If there are no similar positions in the same seniority district, then with similar positions in the same territory."

Carrier cites Awards 6954, 6955, 6956 and 6957 to support its position. These awards according to Carrier involved substantially the same issue between the same parties, and are to be followed rather than Award 8036.

We find in the record that in conference during a discussion of the dispute on the property Carrier argued that a new position had been created when it changed the agency from Agent-Telegrapher to Agent; it does not appear in the record that while the dispute remained on the property Organization attempted to refute this argument or to deny this fact. Organization's first response to it appears in its Ex Parte Submission, where it argues that even if the work of telegraphing had been eliminated from the assignment no new position would have been created; and that, in fact, the very same work remained to be performed after the reclassification as had existed before.

From the beginning on the property, Organization relied on Award 8036. Two of the considerations leading to the conclusion in that award were: (1)

a finding that "Carrier did not interpose the "new position' contention until the case reached this Board . . ."; and, (2) a finding that "It may be that the change in job requirements gave the position some of the attributes of a 'new' position, but it is certain that the position assumes all the attributes of a 'reclassified' position, and the case accordingly is controlled dominantly by Article 2(a)."

We find that in this case the reclassification of the agency involved a substantial change in the responsibilities of the position and that the old position was abolished and a new one established. In this respect the facts in this case differ from those found in Award 8036 and match those we found in Award 6954 where we said: "The Carrier tells us that the Agent-telegrapher positions were duly abolished and positions of Agents were newly created and rates of pay were fixed in accordance with the Agreement. Petitioner does not directly join issue in this docket on Carrier's statement that new positions were created."

Article 7 provides a method and criteria for the establishment of rates for new positions; when a position is properly abolished at a location and a new one substituted for it, even if, as in this case, the incumbent of the old position immediately fills the new position, and unless there is a clear bar elsewhere in the Agreement, the rate for the new position may be established by application of Article 7. We do not find that Article 2(a) as interpreted by Addendum No. 1 to Supplement No. 13 to General Order No. 27, U. S. Railroad Administration (which was the origin of the language used in Section 2(a)) necessarily requires the application of Article 21 in every case of the establishment of changed rates. In this case the reclassification of an assignment resulted in a substantial change in the requirements of a position so that a new position was substituted for the old; since the provisions of Article 7 are specific for establishment of rates for new positions, they properly took precedence over the general provisions of Article 21. Article 2(a) should not be read to force a conflict between it and Article 7 or between Article 7 and Article 21: proper application of the interpretation in Addendum No. 1 avoids such conflict.

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 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 24th day of January 1966.