

**Award No. 14131**

**Docket No. TE-13870**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Herbert Schmertz, Referee**

**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. (a) Carrier violated the terms of the Telegraphers' Agreement when on April 8th and April 14th, 1961, it caused, required or permitted Station Agent, Toccoa, Georgia, W. D. Sholar, to handle (receive copy and deliver) Train Orders Numbers 71 and 72 on April 8th, Number 92 on April 14th, 1961.
- (b) Carrier violated the terms of the Telegraphers' Agreement when effective with termination of duty of the Clerk-Telegraphers' assignment at Toccoa, Georgia, Wednesday, March 8, 1961, that assignment was abolished without abolishing attached duties and assigned or permitted other employees to perform the duties.
- (c) Carrier violated Rule 36 of the Telegraphers' Agreement when it abolished the last and only telegraph position at Toccoa, Georgia effective March 8, 1961, thus reducing it to a non-telegraph office and has failed to remove all railroad telegraph and telephone facilities.
2. (a) For Item 1(a), Carrier shall be required to compensate Extra Telegrapher D. L. Garmon, or senior idle telegrapher entitled, one day, eight hours, each for April 8 and April 14, 1961.
- (b) For Item 1(b), Carrier shall be required to restore the abolished position and compensate occupant C. M. Mitchell for all time lost as result of this abolishment; also to compensate all others affected by this abolishment any loss of pay incurred from this arbitrary action.
- (c) For Item 1(c), Carrier shall immediately be required to establish a telegrapher's position at Toccoa, Georgia or abide

fully with the provisions of Rule 36 and remove from such office all railroad telegraph and telephone facilities used by railroad employees.

**EMPLOYEES' STATEMENT OF FACTS:** At Toccoa, Georgia, on the Charlotte Division, the Carrier had four positions negotiated under the Agreement. At page 72 of the Agreement, it shows that there was a station agent and three clerk-telegrapher positions as of September 1, 1949. Positions at this location are shown back as far as the Agreement of 1906 and were in existence before that time. The Carrier first abolished the third shift clerk-telegrapher position and then in 1957 the second shift clerk-telegrapher position was abolished. The Carrier then issued the following notice, dated March 4, 1961:

"Greenville, South Carolina  
March 4, 1961

W. D. Sholar — Toccoa, Georgia  
C. M. Mitchell — Toccoa, Georgia  
Train Dispatchers

Effective with termination of duty of clerk-telegraphers' assignment at Toccoa, Georgia, Wednesday, March 8, 1961, that assignment is abolished.

/s/ R. P. L.  
(R. P. Lutz  
Chief Dispatcher.)

cc: Mr. Brosnan  
Mr. Wheeler

Train Dispatchers: If necessary to issue any orders at Toccoa, Georgia, get the conductor on phone and issue them to the conductor.

/s/ R. P. L."

It is noted from the above directive that the Carrier did not reclassify the station agent's position at Toccoa, Georgia to an agent-telegrapher but continued to maintain the station agent's position after March 8, 1961.

On March 8, 1961, Mr. R. P. Lutz, Chief Dispatcher, issued the following instructions:

"Greenville, South Carolina  
March 8, 1961

All bulletin books south and Charlotte Division  
Train Dispatchers  
W. D. Sholar, Toccoa, Georgia

C&E Toccoa-Elberton-Local, Toccoa date.

Effective March 9, 1961 the conductor on the Toccoa-Elberton Local call the train dispatcher before he leaves Toccoa, Georgia and let him know that he is ready to go down the Elberton Branch.

/s/ R. P. L.

The Adjustment Board has consistently so ruled with respect to scope rules of the type here involved. Therefore, there is no basis whatsoever for the ORT's allegation that Rule 1 was violated.

Rule 3 (c) has no application in this dispute, as it pertains to the method of payment of extra employees "called for relief service." Claimant Garmon was not needed or called to work on April 8 or 14. Therefore, Rule 3 lends no support to the monetary claim. Mr. Garmon received the extra service and compensation to which he was entitled on dates prior to and after April 8 and 14, 1961.

Rule 31 is the only agreement provision which so much as mentions a kind or type of work, and even it confers only a limited, not exclusive, right upon telegraphers, as previously pointed out herein. That right is shared jointly with dispatchers and is restricted, as to telegraphers, to certain locations. In instances of noncompliance, Rule 31 provides for a payment (Rule 10, Calls) to the regularly employed operator at that location, under certain conditions. However, the instant claim is not for a call payment under Rules 31 and 10.

As Claimant Mitchell was given more than the required thirty-six hours' notice prior to the abolishment of her position, effective with termination of assignment on March 8, 1961, there was no violation of Rule 27. Under the rule, she was entitled to exercise a displacement right on any position on the division to which her seniority and qualifications entitled her.

Prior to May 1, 1948, the effective date of Rule 36 of the agreement, there was an understanding with the Telegraphers' Committee to the effect that when telegraph offices were discontinued and positions of agent-telegrapher were reclassified to non-telegraph agency positions, the telegraph wires would be cut out of the office. This understanding related primarily to the reclassification of positions of agent-telegrapher to station agent at small stations because such change often resulted in rates of pay being reduced. When Rule 36 was negotiated, it was intended to apply only in situations where telegraph positions were reclassified to non-telegraph and rates of pay reduced. The primary purpose of the rule was to prevent the carrier from reestablishing telegraph positions at small stations at rates of pay lower than rates applicable to persons who perform telegraphic duties. Such was not the case at Toccoa, as the agent already had a considerably higher rate of pay than that of the clerk-telegrapher. Also, the agent and other employees at that location have used company telephones in the performance of their assigned duties for more than forty years. Further, there are telephones at innumerable locations over the entire railroad where telegraphers have never been employed. Nevertheless, Parts 1 (c) and 2 (c) of the claim have long since been satisfied, as the position of station agent at Toccoa was reclassified to that of agent-telegrapher in January 1962.

The evidence of record does not support petitioner's contentions that the agreement was violated, nor does it support the claim. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

**OPINION OF BOARD:** The relevant and material facts, necessary to decision in this dispute, are not in controversy. At all relevant times, prior to March 9, 1961, there were two employees covered by Telegraphers' Agreement at Toccoa, Georgia. One position was classified as Station Agent and the other Clerk-Telegrapher. Effective with the end of the tour of duty of the Clerk-Telegrapher, on March 8, 1961, that position was abolished.

On April 8 and 14, 1961, the occupant of the Station Agent position was required to handle three train orders. The position of Station Agent was not reclassified to Agent-Telegrapher, until January 12, 1962.

Claim was filed by the Union, on May 13, 1961. Carrier contends that the claim set forth in Paragraph 1(b) of the Statement of Claim, is barred under the provisions of Article V, August 21, 1954, because it was not filed within 60 days from date of the occurrence, i.e., the abolishment of the position. Other contentions are advanced by the parties, but in view of our decision, it is not necessary to pass upon them and we refrain from doing so.

In Award 12349, the Board held there were no rules in the Agreement that prohibited the Carrier from abolishing the position of first trick Clerk-Telegrapher position and assigning such work to the Agent-Telegrapher in the same office. In that case the position of Station Agent had been reclassified to Agent-Telegrapher prior to the abolishment of the Clerk-Telegrapher position. In the instant case, the reclassification was not made until January 12, 1962.

Rule 1(b) provides:

"The word 'employees' as used in these rules will apply to all of the foregoing classes, and employees will be classified according to duties performed."

Carrier's actions did not indicate an intention to eliminate Toccoa as a telegraph or telephone office, therefore, Rule 36 has no applicability under these circumstances. Indeed, requiring the occupant of the position of Station Agent to handle the train orders on April 8, and 14, 1961, negatives any such intent. Consequently, on these two dates, at least, there was a failure to comply with the provisions of Rule 1(b).

In Awards 10532, 11167, 12045 and 12984, this Division passed upon the question of applicability of Article V, August 21, 1954 agreement. In each of these awards, it was found that claims, contending that the Agreement had been violated because of abolishment of a position on a day certain, had not been filed within 60 days from date of the occurrence, were barred by the provisions of the rule.

In the instant case it is undisputed that the abolishment of the Clerk-Telegrapher position occurred, effective March 9, 1961; that the claim was not filed until May 13, 1961. Thus, the claim was not filed within sixty days of the date of the occurrence. The Union contends, however, that it is a continuing claim and is, therefore, not barred. It will suffice to quote from Award 12984 on this point:

"This is not, as the Employees argue, a continuing claim because it is based entirely upon a single event, the abolishment of the position — an action that occurred on May 16, 1960. (Second Division Award 3594)."

In view of our finding that there was a violation of Rule 1(b), we will sustain a monetary payment of damages for the two days, i.e., April 8 and 14, 1961, in favor of the named Claimant D. L. Garmon. In view of the peculiar circumstances, giving rise to this dispute, it is only fair to say that our finding and assessment of damages, will be limited to this particular dispute.

**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 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 Carrier violated Rule 1(b), as set forth in the Opinion.

Claim 1(b) is barred.

Claim 1(c) is denied.

#### AWARD

In accordance with Opinion:

Claim 1(a) sustained and Carrier shall compensate D. L. Garmon, in an amount equal to two days' pay at pro rata rate, using wage rate in effect on April 8 and 14, 1961.

Claim 1(b) is dismissed.

Claim 1(c) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1966.