

Award No. 14215
Docket No. TE-13461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Texas & Louisiana Lines), that:

1. Carrier violated the parties' Agreement because, on July 14, 1961, it unilaterally reclassified the position at Lafourche, Louisiana, from "Agent-Bridge Tender" to "Bridge Tender."

2. Carrier shall now be required to:

(a) Restore the proper classification to the Agent-Bridge Tender position.

(b) Pay M. D. Mohar a day's pay for each day, Monday through Friday, at the rate of Agent-Bridge Tender as provided for in the wage scale, currently adjusted, commencing July 14, 1961.

(c) Pay the senior available extra man a day's pay for each Saturday and Sunday on the same basis, commencing July 15 and 16, 1961, respectively.

(d) On Saturdays and Sundays when no extras were available, pay M. D. Mohar a day's pay at time and one-half rate, commencing July 15 and 16, 1961, respectively.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case are not in dispute and are relatively simple. The Wage Scale of the parties' Agreement, dated December 1, 1946, page 38, thereof, shows the following:

"WAGE SCALE

Rates of Pay for Employees, Exclusive of Ticket, Express or other Commissions.

On July 24, 1961, District Chairman of The Order of Railroad Telegraphers addressed the Superintendent, Lafayette Division, protesting the closing of the agency, alleging that position of Agent-Bridge Tender at Lafourche was unilaterally reclassified by Carrier without conference or agreement, thereby violating specified rules of the Telegraphers' Agreement. In addition a claim was presented in behalf of Telegrapher M. D. Mohar for a day's pay at the rate in effect for Agent-Bridge Tender as of July 14, 1961, for each day subsequent thereto, Monday through Friday, and in addition a day's pay at time and one-half rate for each Saturday and Sunday (rest days of the position) beginning July 15, 1961, and also in addition claim in behalf of any senior extra idle employee who may be available for service on Saturday and Sunday beginning July 15, 1961. The Superintendent declined the contentions, as advised by District Chairman and he in turn appealed the claim to the General Committee, who by letter dated August 14, 1961, presented protest and claim to Carrier's Manager of Personnel. Letter was acknowledged by Carrier on August 29, 1961. Conference was held September 6, 1961, at which time the claim was passed, and on September 28, 1961, Carrier's Manager of Personnel declined the claim. By letter dated October 4, 1961, the General Committee of the ORT advised that the decision of management was not accepted.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of Agent-Bridge Tender at Lafourche, Louisiana, listed in the December 1, 1946 Agreement, had been in existence for fifteen years when, in 1961, Carrier requested authority from the Louisiana Public Service Commission to discontinue use of incumbent and replace him with an employee classified as a bridge tender. The Commission granted Carrier's request on June 8, 1961, finding that (1) the incumbent actually did no business with the general public such as is ordinarily conducted by a railroad agent, but did serve as a bridge tender, and (2) the salary of a bridge tender is lower than that of an agent-bridge-tender, and (3) the public convenience and necessity would not be affected by the proposed reclassification.

Effective July 14, 1961 Carrier discontinued the Agent-Bridge Tender position and, simultaneously, issued a bulletin to its Maintenance of Way employees advertising a vacancy of Bridge Tender. On July 28 the new position was filled. Meanwhile, on July 24, the instant claim was submitted.

Petitioner urges that (1) the Agent-Bridge Tender position has not been removed from the Telegraphers' Agreement either by negotiation or abolishment of its work; (2) the position has not been properly reclassified, for that can only be done by negotiation and agreement as prescribed by Rule 2(c); and (3) by failing to conform to the requirements of the Agreement Carrier has deprived Employees of a job for which they bargained. Petitioner notes Board decisions, such as Awards 5431 and 434, declaring that a position established pursuant to contract provisions cannot be abolished and its work assigned to employees belonging to another craft. It cites decisions on this property (Awards 348 and 3289) which, it believes, bar Carrier's July 1961 actions, as well as decisions in similar situations elsewhere, including Awards 6204, 13074, 13760, and 4580.

These arguments are not persuasive, in our judgment. The following factors are significant:

Rule 41 declares, in relevant part, that "the rates of pay herein enumerated do not constitute a guarantee that any position will be maintained, the Company reserving the right to abolish positions and to reduce the force as conditions require." The position at Lafourche was a combination job, established so that one man could handle both agency and bridge tending tasks. The agency work disappeared completely and, in 1961, Carrier determined that it no longer required a man with agent's qualifications at this location, although it still needed someone to tend the bridge. There is nothing in the Telegraphers' Agreement which indicates that bridge tending work, as such, has come within the purview of this Organization. Jobs of this nature are included neither in the Scope Rule nor among the positions listed in the wage scale. By contrast, Bridge Tenders have been included in Maintenance of Way agreements on this property.

Management had cause to abolish the combination position and acted within its Rule 41 rights. True, the incumbent Agent-Bridge Tender has not performed any agency work for about two years, but Carrier's delay in moving to permanently eliminate the position did not serve to establish, in effect, an Agreement-covered position at Lafourche which required only bridge tending. Rule 2(c), consequently, was inapplicable ("Change of classification or rate of pay of any position covered by this agreement shall be made only by agreement between the parties hereto").

The facts here differ from those in cited Awards. Thus, in Award 6204 the Carrier abolished an Operator-Clerk position after first transferring the telegrapher duties to a different location and then reassigning the remaining functions to a person outside the Telegraphers' Agreement. In Award 13074 the Board noted that "All that happened was that one position covered by the Telegraphers was abolished, and one position not covered by the Telegraphers was added and the same work continued to be done." In Award 13760 the Board stated that "Here, both telegraphic and clerical duties of the abolished position remained to be performed . . . and this case must be distinguished from those cases where the primary telegraphic work had disappeared."

Award 348, involving these same parties, was concerned with Carrier's attempt to abolish agency and agent-telegrapher positions (including one at Lafourche) within the Agreement and assigning substantially the same duties to a small non-telegraph agency. That is not the situation here. Award 3289 involved a complaint against this Carrier submitted by Brotherhood of Maintenance of Way Employees. In that case Carrier had maintained a day turn Agent-Bridge Tender position (under the Telegraphers' Agreement) at San Leon for many years. In 1936 Carrier and MofW entered into an agreement covering "exclusive" bridge tenders; the San Leon Telegrapher's position continued in existence without protest. In 1940 Carrier established a night turn bridge tender's position under the MofW agreement. In 1944, when the Night Bridge Tender resigned, Carrier did not fill this position because of the substantial drop in water traffic. The Agent-Bridge Tender remained. MofW's complaint that Carrier had improperly failed to bulletin and fill the Night Bridge Tender's job was denied since there was no work for a second man and the Agent-Bridge Tender continued to perform the same functions as before, e.g., both agency and drawbridge work. This Award supports Carrier's action in the case at hand to the extent that it establishes that an exclusive bridge tender position comes within the MofW Agreement on this property. While the MofW, in that case, did not protest the establishment of a combination Agent-Bridge Tender position or its use between 1937 and

1944, neither did the Telegraphers protest the establishment and use of an exclusive Bridge Tender position. (We recognize of course, that no ORT position was lost.)

In sum, then, it appears that the combination Agent-Bridge Tender position was included in the Telegraphers' Agreement because of the Agency work involved. Petitioner has no general claim — based on contract or practice — over exclusive bridge tender's work. When all the agency work disappeared at Lafourche it was not improper to discontinue the combination job and establish a new exclusive bridge tender's position outside the Telegraphers' Agreement. The claim, consequently, must 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 3rd day of March 1966.