

Award No. 14401
Docket No. TE-11663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier violated the parties' Agreement when on October 27, 1958, it declared the Agent-Operator's position at Sharon, Pa., abolished without in fact abolishing the work thereof, which was transferred to an employee on an excepted position with the Pittsburgh and Lake Erie Railroad at Sharon, Pa.

2. The Carrier shall, because of the violation set out above, restore the work to the parties' Agreement.

3. The Carrier shall, in addition to the foregoing, compensate N. L. Leonard; C. C. Thompson; H. E. Boylan; A. G. Beach; E. L. Ashe; R. R. Bates and J. F. Barlow, for any loss of wages and additional expenses incurred by reason of the Carrier's violative act for each day that such violation continues.

4. The Carrier shall also compensate any other employees adversely affected by reason of the improper abolishment of the Agent-Operator's position at Sharon, Pa., for any loss of wages or expenses incurred, so long as the violation continues. The dates and amounts due such employees to be determined by a joint check of the Carrier's records.

OPINION OF BOARD: For some years Carrier maintained a freight station at Sharon, Pennsylvania, where it employed an Agent-Operator. The Pittsburgh and Lake Erie, and the Erie Railroads also operated freight station facilities at Sharon in a building about one-half mile away from the Carrier's station. In September, 1957, Carrier moved the position of the New York Central Agent-Operator to the building occupied by the Pittsburgh and Lake Erie, and Erie Railroads. On June 16, 1958, Carrier served notice of its intention to coordinate the work of its Agent-Operator with that of the Pittsburgh and Lake Erie Freight Agent position. Under this

plan the Pittsburgh and Lake Erie Agent was to be in charge of the consolidated office force. The Brotherhood protested that the proposed change would abolish the position without abolishing the work and would transfer the work to employees not subject to the Agreement. It offered the suggestion that the New York Central Agent-Operator perform his work in the consolidated office and that his position remain under the New York Central Agreement. The parties did not resolve their differences, and on October 27, 1958, Carrier abolished the Agent-Operator position and consolidated his work with that of the Pittsburgh and Lake Erie Agent.

Brotherhood bases its claim on a violation of the Telegraphers' Agreement, pointing out that the position of Agent-Operator was abolished, although the work remained and was transferred to a position not subject to the Agreement. It also asserts that the coordination violated the Washington Job Protection Agreement, particularly Section 5, which requires agreement between the parties concerning any assignment of employees made necessary by a consolidation of functions.

Carrier maintains that it did not violate the Telegraphers' Agreement and that it had a right to effect the consolidation under the Washington Job Protection Agreement. It states that the consolidation falls within the provisions of Section 2(a) and that proper notice was given under Section 5.

Although Carrier asserts that Section 13 of the Washington Job Protection Agreement sets out the machinery to be used for settling this consolidation controversy, the Brotherhood, nevertheless, filed this claim before both this Board and the committee established pursuant to Section 13 of the Washington Job Protection Agreement. In the Referee's decision on the latter claim, Docket 57, he held that "in the absence of an agreement between the Carrier and the Organization it was a breach of Section 5 of the Agreement to put the coordination plan into operation unilaterally."

As in Award No. 11590 we, too, find that failure to comply with the Washington Agreement does not remove the issue of Carrier's violation of the collective bargaining agreement which is before this Board. Accordingly, this Board now considers the question of whether or not Carrier violated the Telegraphers' Agreement when it coordinated the position of Agent-Operator at Sharon, Pennsylvania, with the position of Agent for the Pittsburgh and Lake Erie, and Erie Railroads, at that city. Since there is no question that the work of the abolished position was transferred to an Agent position on the Pittsburgh and Lake Erie Railroad, not subject to the Agreement, we find that Carrier violated the Agreement. See Awards Nos. 8266 and 12478.

We hold, therefore, that since the Agreement was violated, Claim 1 is sustained and that the employees named in Claim 3 are entitled to compensation as requested.

Claim 2 is denied to permit Carrier the alternative of finding means to comply with the Agreement in other ways suitable under changing conditions.

Claim 4 also is denied because it is too vague and indefinite.

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 the Agreement to the extent shown in the Opinion.

AWARD

Claim sustained in part and denied in part, as set forth in Opinion.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May 1966.