

Award No. 14602
Docket No. TE-12166

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that:

1. Carrier violated and continues to violate the agreement between the parties when it declared abolished the following positions and transferred all the work thereof to employees not covered by the agreement:

Second Operator at Waynesboro, Virginia on March 27, 1959;
Second Operator at Berryville, Virginia on March 30, 1959;
Second Operator at Luray, Virginia on April 1, 1959;
Second Operator at Front Royal, Virginia on April 7, 1959.
2. Carrier shall be required to compensate the following employees moved from their regular assignments under the provisions of Rule 21: T. F. Humphries, C. M. McCrory, K. J. Lowe, M. L. McIntosh, W. H. Hankins, F. E. Hankins, L. E. Ramsey, M. T. Ramsey, W. E. Huffman, M. C. Erickson, M. A. Patterson and C. E. Ballard.
3. Carrier shall also compensate all other employees adversely affected for any wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Waynesboro, Berryville, Luray and Front Royal, all in the State of Virginia, are stations on the Shenandoah Division of this Carrier.

On the dates shown in the Statement of Claim, the Carrier declared abolished the position of second operator at each of these stations. This also resulted in the discontinuance of relief positions which furnished the rest day relief thereon. At each station it created a position of clerk, under another

to April 6, 1959. The only work transferred from the Second Operator and Clerk position to clerk at Front Royal was strictly clerical work not reserved exclusively to Telegraphers.

The Employees filed the following claim:

"STATEMENT OF CLAIM:

1. Carrier violated and continues to violate the Agreement between the parties when it declared abolished the position of Second Operator at Berryville, Virginia on March 30, 1959; the position of Second Operator and Clerk at Front Royal, Virginia on April 7, 1959; Relief Position No. 2 on March 28, 1959 and transferred all the work of these positions to employees not covered by the Agreement.

2. Carrier shall be required to compensate the following employees moved from their regular assignments under the provisions of Rule 21 commencing on March 30, 1959, April 7, 1959, March 28, 1959, and continuing thereafter until the violation is corrected.

C. M. McCrory

M. G. Erickson

M. L. McIntosh

M. A. Patterson

C. E. Ballard

3. Carrier shall compensate all other employees adversely affected for any wage loss suffered."

The Carrier declined the claim.

OPINION OF BOARD: Carrier abolished positions of second operator at the four stations named in the claim. Petitioner contends that some of the work formerly performed by the operators covered in the Telegraphers' Agreement was transferred to and was being performed by clerical employees not covered by that Agreement.

Carrier failed to clearly meet the issue on the property. In reply to the original presentation of the claim and in the various stages of appeal Carrier merely said, "In my opinion, the claim is not supported by the rules cited; therefore, it is declined" and "I do not consider the claims for the employees you have named to be supported by Rules 1, 2 and 21 of the current agreement, which you cite, and all claims are declined." Carrier's highest appeal officer wrote:

"We understand the basis of the claim in the instant case is the abolishment of a telegrapher position and having a clerk perform the clerical work previously performed by the telegrapher.

Our decision is the claim is not supported by the rule cited and it is declined."

It is unfortunate that the Carrier was not more specific and did not present its position in full. A general denial leaves much to be desired.

Not until the claim was appealed to this Division did the Carrier present evidence and arguments in some detail which fully met the assertions of the Petitioner.

But the burden of proof is upon the Petitioner to show that telegraphers' work was transferred to and was being performed by clerks. The mere fact that telegraphers, who occupied the abolished positions, had performed some clerical work in addition to their other duties does not establish the fact that it was work covered under the Telegraphers' Agreement. Petitioner has failed to meet this burden of proof.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1966.