

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

MARYLAND AND PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maryland and Pennsylvania Railroad, that:

1. (a) Carrier violated the terms of the Agreement between the parties when, effective September 1, 1960, it declared "abolished" the positions of agent-telegrapher at Red Lion, Pennsylvania and Delta, Pennsylvania, when in fact the work of said positions remained and is to be performed each work day thereafter.

(b) Carrier further violated the Agreement when, commencing September 1, 1960, and continued thereafter, it unilaterally established a new position for the purpose of merging, combining and consolidating the work, services and duties of the agent-telegrapher positions at Red Lion, Pennsylvania and Delta, Pennsylvania, and required one employe to divide his time between said two stations located some twenty-five (25) miles apart.

(c) Carrier further violated the Agreement when effective September 1, 1960, it unilaterally imposed a condition of employment upon a newly assigned occupant of the newly established position of agent-telegrapher (Red Lion-Delta) which requires the ownership and use of a privately-owned automobile to hold such position.

2. (a) The Carrier shall be required to restore the full-time status, the two agent-telegrapher positions at Red Lion, Pennsylvania and Delta, Pennsylvania, and return the regular owners of these two positions to their respective assignments.

(b) Carrier shall return other employes who have been displaced from their assignments as a result of these violations.

3. (a) Carrier shall compensate Howard G. Benson, or his successor, for an additional day's pay at the highest rate of the two positions involved, for each day on a day-to-day basis he is required

to commute between the two duly established and recognized separate agencies, and perform agency service at both.

(b) The Carrier shall remove the conditions of employment it has attached to the newly established agent-telegrapher position (dualized) which requires the ownership and use of privately-owned automobile to perform the work of said position.

4. (a) The Carrier shall compensate Harold Franklin Anstine at Delta, Pennsylvania and Howard G. Benson at Red Lion, Pennsylvania in the amount of a day's pay at straight time rate of the agent-telegrapher's position from which they were displaced, for each work day of the position on a day-to-day basis, representing compensation lost as a result of being deprived of working his or their assignments; and further, pay said Harold Franklin Anstine and Howard G. Benson at the time and one-half rate of their respective positions for any day service has been performed on a rest day of said positions, plus any other losses sustained and expenses incurred which would not have been present had the Agreement been respected.

(b) Carrier shall compensate, for each work day, on a day-to-day basis, all other employees who were displaced from their regular assignments as a result of the above stated violation, in the amount equivalent to a day's pay at the straight time and the time and one-half rate on any day that service has been performed on a rest day of the position from which improperly displaced; also, pay for any other losses sustained and expenses incurred which would not have been present had they not been displaced.

5. The senior, idle employee, extra in preference, shall be paid one day's pay at the applicable rate at Red Lion and Delta, Pennsylvania, on each day beginning September 1, 1960, and continuing thereafter until such violation is corrected.

6. A joint check of the Carrier's records shall be made to determine the names and amounts due employees as set forth herein.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties of August 1, 1938 showed under the wage schedule the negotiated positions of agent-telegrapher at Red Lion and Delta, Pennsylvania. The revised wage schedule of January 30, 1957 again showed the negotiated positions of agent-telegrapher at Red Lion and Delta, Pennsylvania.

By Bulletin No. 1543, dated August 22, 1960, the Carrier unilaterally declared that effective September 1, 1960 the positions of agent-telegrapher at both Red Lion, Pennsylvania and Delta, Pennsylvania were to be abolished. Effective the same date, the Carrier unilaterally created a permanent position which it called "agent-telegrapher at the Red Lion-Delta agency." See ORT Exhibit 1.

By notice of September 2, 1960, the Carrier awarded the permanent position of agent-telegrapher at the Red Lion-Delta agency to Howard G. Benson. See ORT Exhibit 2.

By letter of September 8, 1960, General Chairman Tyndall wrote protest to President and General Manager A. M. Bastress, in which he stated that the

In its negotiations, this Company has carefully guarded its vested right to determine the size of the work force and to adjust the size of the force as business conditions dictate. In Award 5803 the Carrier discontinued Agent-Telegrapher positions at Tieton, Glead, and Naches, Washington; and with the close of those stations transferred the work to the station at Yakima. In that case The Order of Railroad Telegraphers took the same position as in the instant case, i.e., "that these station agency positions were not abolished in fact because the work thereof did remain, and still remains to be performed." In that case too the organization cited the Schedule of Wages, Rule 90, to support the claim. In denying the case, the Third Division held as follows:

"Whether or not a station shall be closed is a prerogative of management, subject to the interests of the public which it is the duty of the public service commission to protect. While the large income derived at these points makes it appear that a necessity for an open station exists, management has determined otherwise. The amount of revenue produced at a station is not a controlling factor in determining the need for an open station. No employees are being used at these points. With the closing of the stations the clerical work formerly performed by the agent-telegrapher is being performed by clerks at Yakima. This, we think, is in accord with the Agreement and the generally accepted practice.* * *

It is the duty of management to operate its railroad with efficiency and economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employees of another craft who are entitled to perform it. The Carrier is, of course, limited by any agreement it has made in conflict with the method employed. We have found no rules which have been violated by the Carrier in closing these one-man stations and assigning the remaining work of the agent-telegraphers to those entitled to perform it. Awards 4939, 4992, 5283, 5318, 5719." (Emphasis ours.)

In Award 7359 the Third Division ruled:

"The language of Rule 7 does not say that the Carrier cannot abolish a position without agreement between the General Manager and the General Chairman. It only provides that rates of pay and changes of classification must be agreed upon. To sustain the claim now before us would, in effect, put us in the position of denying the Carrier the right to abolish jobs found to be uneconomical to operate. We do not think that such was the intent of the parties when they adopted Rule 7."

(Exhibits not reproduced.)

OPINION OF BOARD: 1. Employees claim that by Bulletin No. 1543 dated August 22, 1960 the Carrier unilaterally declared that effective September 1, 1960 the positions of Agent-Telegrapher at both Red Lion and Delta, Pennsylvania were to be abolished.

Effective the same date, the Carrier unilaterally created a permanent position which it called Agent-Telegrapher at Red Lion-Delta agency.

Employees also claim that the position of Agent-Telegrapher at Delta is not abolished because work is still being performed there.

Employees requested that the positions at Red Lion, Pennsylvania and Delta, Pennsylvania be restored as they were originally prior to Bulletin No. 1543, dated August 22, 1960.

2. Carrier's Statement:

This case involves the abolishment effective September, 1960, of two positions of Agent-Telegrapher at Red Lion, Pennsylvania and Delta, Pennsylvania and the creation of a new position of Agent-Telegrapher combining the work of the two abolished positions.

Carrier also states that the reason for such change was necessary because of a decrease in traffic and also with substantial curtailment in train service.

The Carrier has submitted figures of a steady decrease over the years, and the revenues for 1960 show a reduction of over 50% compared to 1955.

As to the claim made by the employees that the position is not abolished we fail to agree since the work performed at Delta, does not require more than one hour per day.

The work of the combined stations is being done by one agent in a manner satisfactory to the shipper and without burden upon the incumbent.

The Carrier has the right to abolish unneeded positions.

From an analysis of the record, the authorities cited and the reasons stated herein, we conclude the claim is 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 15th day of July 1966.

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