Award No. 14715
Docket No. TE-12407

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION (FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that:

1. The Carrier violates the terms of the Agreement between the parties hereto when on November 16, 1959, it declared abolished the first shift operator's position at Rives, Tennessee, without in fact abolishing the work thereof, and

2. The Carrier further violates the parties' Agreement when on November 16, 1959, it transferred the work of the nominally abolished 1st shift operator's position at Rives, Tennessee, to a GM&O railroad agent not covered by the parties' Agreement.

3. The Carrier shall, because of the violations set out above, restore the 1st shift operator's position at Rives, Tennessee, to the Agreement by returning the work thereof, and the former incumbent of the position thereto.

4. The Carrier shall, in addition to the foregoing, return all employes improperly displaced from their respective positions, to their positions and compensate them for any wages lost or expenses incurred by reason of the Carrier's violative act.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective as to rules June 1, 1951, revised December 1, 1956, and as otherwise amended.

At page 130 of said Agreement, the Wage Appendix, is listed the positions existing at Rives, Tennessee, on the effective date of said Agreement.

The listing reads:

LOCATION	POSITION	RATE OF PAY EFFECTIVE NOVEMBER 1, 1958
***Rives (GM&O)	0 (3)	$2.32

*** - Joint Agency."

At page 29 of an agreement between these same parties, effective September 1, 1903, is listed the positions existing at Rives, Tennessee, on the effective date of that agreement. The listing reads:

Agreement. Carrier denied the claim because **all work at this joint station** belonged, from the beginning, to the GM&O Railroad which had the right to take it back, as it did, at any time. Illinois Central Telegraphers performed work at the station at the will of the GM&O Railroad, and they never, by contract or otherwise, acquired exclusive rights to it.

Carrier's Exhibits "A" through "D" are copies of all relevant correspondence exchanged between the Carrier's Manager of Personnel and the General Chairman with respect to this dispute. Exhibit "E" is a copy of the contract, dated October 23, 1903, between the Illinois Central and the Mobile and Ohio Railroads, providing for the installation, maintenance, and operation of joint station and interlocking facilities at Rives, Tennessee.

The agreement between the parties in dispute, effective June 1, 1951, as amended, is by reference made a part of this statement of facts.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 23, 1903, this Carrier and the Mobile and Ohio Railroad Company (now known as the Gulf, Mobile and Ohio Railroad Company) entered into an agreement providing for the installation, maintenance, and operation of a joint station and interlocking system at Rives, Tennessee. This agreement, among other things, includes the following:

> "4. There shall be employed at the said joint station an agent who shall attend to the business of the parties hereto, and who shall employ such assistants as may be necessary. **The agent shall be appointed by the Mobile Company.** Any Agent, or agents, or any of his assistants shall be removed by the Mobile Company, at any time, on the written request of the Central Company." (Emphasis ours).

Although the 1903 agreement between the two railroad companies also provides that the GM&O shall furnish and compensate all employes used at this station, the GM&O permitted the Illinois Central to furnish and pay Levermen-Operators who performed communication work for both Carriers at the joint station. The Agent continued to be appointed and paid by the GM&O.

The 1951 Agreement between the Petitioner and this Carrier lists three Operator positions at Rives and acknowledges the fact that Rives is a joint agency with GM&O.

An automatic interlocking plant replaced the manually operated interlockers efective November 16, 1959. Carrier abolished the first shift Operator position and the Agent assumed the communication work heretofore performed by that Operator.

Petitioner contends (1) that the transfer of this work from the Operator to the Agent violated the Agreement; (2) that even though GM&O has the primary obligation to furnish employes to operate the joint station and even though the Illinois Central employes were merely permitted to fill the Operator positions, the work became their vested right by custom, practice and tradition; and (3) that when jobs are abolished any remaining work must be assigned to employes of the same craft and in the same seniority district.

There is no denial that Petitioner has had knowledge of the joint agency. This is acknowledged in the Agreement with this Carrier. The mere listing

of the Operator positions in that Agreement does not invalidate, nor does it modify the express undertakings and obligations contained in the October 23, 1903 contract entered into by the two Carriers.

In Award 11002 we said:

> "There have been many instances where two or more rail Carriers have found it necessary and desirable to enter into contracts for the performance by one of them of a joint or mutual duty or in other ways to share work required to be performed * * *. The work to be performed under these circumstances falls to the Carrier and its employes who by reason of such agreements between Carriers, have the superior or contractual duty to perform it."

The GM&O has, under the 1903 agreement, the "superior or contractual duty" to perform communication, as well as other work at the joint agency. This duty was never abrogated, nor did the GM&O agree with the Illinois Central to permanently waive its obligation. This could only be done by an express amendment to the 1903 agreement duly executed by the two Carriers. The fact that the Illinois Central furnished and paid Operators does not constitute such a waiver or modification of the 1903 agreement. The GM&O could, at any time, cancel this arrangement and furnish communication employes for the joint agency. As stated in Award 6210, "the Organization has no right to dictate the terms of the contract between the two railroad companies." Employes covered by the Telegraphers' Agreement with this Carrier may not, by custom, practice and tradition, acquire vested rights to a position which another Carrier is obliged, by contract, to furnish in the operation of a joint agency. See Award 11705.

Further, the Agent has always been an employe of the GM&O. There is no convincing evidence in the record that he had never performed some communication work. While an Agent's position includes considerable clerical work, it can and does include communication work. It is not unusual for an Agent to perform an Operator's duties.

The installation of the automatic interlocking system made the first trick Operator position superfluous. There was not enough work for him to do. What communication work was required on that shift could be done by the Agent. Carrier had a right to abolish the Operator position. The GM&O Agent had every right to assume such communication duties that were necessary to operate the automatic interlocking system.

Petitioner particularly emphasizes Awards 12478 and 14591 in support of its position. Both are distinguishable. Neither is directly applicable to the facts in this case.

In Award 12478 there was a joint agency at Harriman. But the record does not disclose that there existed an agreement among the Carriers obligating any one of them to furnish the employes used at the joint agency. And the Claimant, whose position was abolished, had not performed work for the joint agency. Likewise, in Award 14591 there was also no agreement for one Carrier to furnish the employes at the joint agency. In that case the Carrier abolished work at one station which was not a joint agency, and transferred the work to another station, which was a joint agency.

For the reasons herein set forth, we are obliged to conclude that there is no merit to the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 July 1966.

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