

Award No. 14742
Docket No. TE-11515

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

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

1. Carrier violated the Agreement between the parties when at the end of tour of duty on July 4, 1958, it declared "abolished" the positions of agent-operator at Beverly and Bowden, West Virginia, when in fact the work of such positions remained and was required to be performed daily Monday through Friday thereafter.
2. Carrier violated the Agreement between the parties when commencing July 7, 1958 and continuing thereafter, it merged, combined and consolidated the work, services and duties of the position of agent-operator at Beverly, with the work, services and duties of the position of agent-operator at Bowden, and required one agent to divide his time between the two stations located 16 miles apart.
3. Carrier shall be required to restore the full-time agency positions at Beverly and Bowden to a minimum eight hour daily basis as each existed prior to July 4, 1958.
4. The regularly assigned occupant of the Beverly agency, Mr. H. R. Jones and Mr. D. B. Goode at Bowden, who were thus improperly removed from their assigned positions, shall be restored thereto and be compensated in full for all monetary loss resulting from Carrier's improper action in removing them from their regular assignment, and also paid for all expenses incurred as well as travel and waiting time while working on other positions until restored to their regular assigned positions.
5. All other employees displaced as a result of violations hereinbefore set out, shall also be compensated in the same manner as outlined in Paragraph 4.

6. The senior idle employee, extra in preference, shall be paid one day's pay at the applicable rate at Beverly and Bowden on each and every day beginning July 7, 1958 and continuing thereafter until such violation is corrected.

7. A joint check of Carrier's records be ordered to ascertain and verify the names and amounts due employees as set forth herein.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collective bargaining Agreement entered into by and between Western Maryland Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective February 1, 1951 and is on file with this Division. The Agreement is, by reference, made a part of this dispute as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Division has jurisdiction of the subject matter and the parties to this dispute.

1. At all times involved herein, Beverly, West Virginia was and is a station on Carrier's line of railway designated as the Huttonsville Branch. It is located 6.7 miles west of Elkins, West Virginia, a division point on Carrier's railway.

2. Bowden, West Virginia, at all times involved herein, was and is a station on Carrier's line of railway designated as the Durbin Sub-Division. It is located 10.4 miles southward from Elkins, West Virginia. By highway, the distance is about 16 miles between the two points.

3. In Rule 29 of the Agreement effective February 1, 1951, the parties negotiated for position at Beverly, as follows:

(Location) Beverly (Position) Agent-Operator (Rate per hour) \$1.7100
(By later negotiations, wage rate was increased)

4. In Rule 29, Agreement effective February 1, 1951, the parties negotiated for position at Bowden, as follows:

(Location) Bowden (Position) Agent-Operator (Rate per hour) \$1.6475
(By subsequent negotiations, rate of pay has been increased).

5. At all relevant times prior to July 4, 1958 (but including this date), H. R. Jones was the regular assigned agent-operator at Beverly having assigned hours of 8:00 A. M. to 5:00 P. M. (one hour for lunch), Monday through Friday of each week. Saturday and Sunday of each week were assigned rest days.

6. At all times relevant to this dispute, prior to July 4, 1958 (but including this date), D. B. Goode was the regular assigned agent-operator at Bowden with assigned hours of 8:00 A. M. to 5:00 P. M. (one hour for lunch), Monday through Friday of each week. Saturday and Sunday were assigned rest days.

OPINION OF BOARD: Prior to July 4, 1958, Claimants were Agent-Operators at Bowden and Beverly, West Virginia, communities approximately 15 miles apart by highway. Carrier abolished both positions and combined the duties into a single new position serving both stations, following a study of the service requirements of each station and the work loads of the former positions. This action was effected by a bulletin posted on June 23, 1958 abolishing the former positions and establishing a new joint agency. The successful applicant for the new position was the senior incumbent of the abolished positions. Carrier advised Petitioner of the proposed plan for the establishment of a joint agency but there was no prior agreement between the parties.

The primary point at issue is whether Carrier has a right to combine the remaining duties of two abolished positions at different locations into one serving both locations as a new joint agency without prior negotiations and agreement with Petitioner.

Petitioner contends that Carrier violated various provisions of the Agreement between the parties when it abolished the two Agent-Operator positions and effected a consolidation of the duties into one position.

Carrier denies that any rules of the controlling Agreement were violated and maintains that the disputed acts were a proper exercise of managerial authority to operate efficiently and economically.

The record discloses that Carrier's business at both Beverly and Bowden, West Virginia had declined over the years to the point where it was possible to assign the regular duties at both stations to a single employe on a daily basis. Moreover, the Public Service Commission of West Virginia approved the consolidation of services by Carrier. Therefore, it is clear that Carrier's disputed action flowed directly from economic considerations.

Petitioner's case is bottomed upon the premise that Carrier's actions are violative of the effective Agreement between the parties because no specific authority for the abolition of the former Agent-Telegraphers positions and resulting creation of a joint agency is contained in said Agreement. We have examined prior awards cited by Petitioner in support of said premise as well as conflicting and more recent Awards cited by Carrier in support of its position and conclude that Carrier possesses the authority to assign the disputed work at two locations to a new consolidated position if no rule of the applicable Agreement provides to the contrary. (Awards 11660, 12486 and 14126)

Petitioner contends that several rules contained in the controlling Agreement were specifically violated by Carrier. Rule 29 is a schedule of agreed upon wages for listed positions, including the two abolished positions involved herein. This Board has held that Rule 29 of the controlling Agreement does not constitute a guarantee against a job abolishment but is only descriptive. (Awards 7402 and 8061) The listing of locations does not constitute a basis for preventing Carrier from requiring service by a single employe in two locations. There is no evidence that incumbent of the joint agency position can not handle his work at both locations within his regular hours of duty. (Award 14126)

Other rules allegedly violated by Carrier are Rule 10, the Guarantee Rule, and Rule 12 (c) which provides that "Employees will not be required

to suspend work during regular assigned hours, or to absorb overtime." We are satisfied from our study of the record that neither of these rules nor any other provision of the Agreement, directly or by reasonable inference, prohibits the Carrier from abolishing the former positions of Agent-Operator and consolidating the remaining functions of both positions in a single newly created position without obtaining agreement from the Petitioner through negotiation.

Accordingly, it is our conclusion that present claim 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 August 1966.