

Award No. 14744
Docket No. TE-11384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, 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, effective June 1, 1958, it declared the position of Assistant Agent and Operator and the position of Operator and Clerk at Abingdon, Virginia abolished and transferred the work thereof to employees having no rights thereto.

2. Carrier shall compensate W. E. Belcher, displaced Assistant Agent and Operator, and E. S. Jackson, displaced Operator and Clerk, in accordance with Rule 21 commencing June 1, 1958 and continuing thereafter until the violation is corrected.

3. Carrier shall also compensate all other employees (names are known to the Carrier) adversely affected for wages lost and expenses incurred.

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

Abingdon, Virginia is a station on the Radford Division of this Carrier's lines between Roanoke, Virginia and Bristol, Virginia-Tennessee at the junction point between the main line and the Abingdon Branch. Generally, the work at Abingdon consists of station work and communication work relating to the business at that station and the communication work of the Abingdon Branch is either relayed or the circuits "cut-through" by the operator at Abingdon. The work will be discussed in greater detail later in this submission. There are two locations at which work is performed, the Freight

"2. As a result of this improper action the carrier shall reimburse the displaced employes, namely W. E. Belcher and E. S. Jackson, under the provisions of Rule No. 21 for loss of pay, plus expenses incurred in making transfer and during the period of the violation on a day to day basis.

"3. All other employes, whose names are known to the Carrier, that have been adversely affected by said violation, be reimbursed for wages lost and expenses incurred."

The Carrier declined the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Immediately prior to June 1, 1958 the following positions existed at Abingdon stations:

FREIGHT STATION:

Agent and Operator
Asst. Agent and Operator
Cashier
Warehouseman

UNDER:

Telegraphers' Agreement
Telegraphers' Agreement
Clerks' Agreement
Clerks' Agreement

PASSENGER STATION

Operator and Clerk
Clerk-Ticket Seller

Telegraphers' Agreement
Clerks' Agreement

Effective June 1, 1958, the agency force was assigned as follows:

FREIGHT STATION

Warehouseman

UNDER

Clerks' Agreement

PASSENGER STATION

Agent and Operator
Cashier
Clerk-Ticket Seller

Telegraphers' Agreement
Clerks' Agreement
Clerks' Agreement

The positions of Assistant Agent and Operator and Operator and Clerk, both covered by the Telegraphers' Agreement, were abolished as of June 1, 1958 and their duties reassigned. These duties of a communications nature were assigned to the Agent and Operator, sole remaining employe at the station covered by the Telegraphers' Agreement, and the remaining non-communications or clerical duties were assigned to the positions covered by the Clerks' Agreement. Certain clerical tasks heretofore performed by the Agent and Operator were also shifted to those positions covered by the Clerks' Agreement.

It is alleged by the Organization and not denied by the Carrier that the abolished positions had existed for fifty years prior to June 1, 1958, and that their duties had always been the same.

The Organization further alleges that these positions were recognized by the Agreement since they were listed therein under the Schedule of Wages on Page 47, that since they were so recognized it follows that they were negotiated for and cannot be abolished without negotiation. They also contend that since the positions are so fixed, and that since work is the essence of the position, the work is so fixed by fifty years of performance, belongs to the craft in these positions and cannot be reassigned outside the Agreement without violation of the Scope Rule.

They further set out as a basic premise that a position may not be abolished as long as a substantial part of the work of the position remains.

There is no contention that any work other than clerical in nature has been assigned to those positions outside the Agreement.

The Organization has cited numerous awards in support of these positions, the most pertinent being 4734 (Stone), 5014 (Parker), 5281 (Wyckoff), 7409 (McMahon), 11072, 11368 (Dorsey), 13074, 13075 (House), 13096 (West), 13312 (Coburn), 13559 (Hutchins), 13760, 13761 (Weston).

The Carrier responds that, although Telegraphers historically have filled out their work day with clerical work, this work does not become theirs by passage of time, that it may be ebbed and flowed from Telegraphers' positions according to Management prerogative to determine who does what work within terms of applicable agreement.

Carrier further contends that there is no restriction within the Agreement on the management prerogative of abolishing covered positions providing proper notice is given; and that the scope rule is in no way violated when clerical duties are assigned to positions not covered by the Agreement subsequent to abolishment of covered positions, such duties only having previously been so assigned by management decision, not contract provision.

This Board is of the opinion that the abolished positions as such were not negotiated notwithstanding their enumeration under the Schedule of Wages, but that rather the positions were already in existence as alleged by the Organization and that their pay scales were there fixed by the Agreement. Therefore no argument will be accepted that they were negotiated for and must be negotiated out.

As to the basic argument that no job may be abolished as long as the work of the position remains, no such restriction is found in the Agreement and this Board may not create terms between the parties which they did not themselves contract. The right to abolish positions must here reside in Carrier, to be exercised in light of the provisions of the Agreement.

The Scope Rule of this Agreement was not intended of itself to vest in Telegraphers the exclusive right as a craft to any clerical work. It is accepted by both parties that such work has always been used to fill out a work day for covered positions. Since there has been no showing that any of the clerical work done on the abolished positions or that shifted from the retained Telegraphers' position has been performed by the craft throughout the subject property, then such work cannot be brought under the Scope Rule, however long performed at this station, since the Agreement is property-wide and must be so applied.

This Board is of the opinion that the Agreement has not been violated, and so sustains in whole or in part Awards 615 (Swacker), 4791 (Robertson), 4909, 5803 (Carter), 6363 (McMahon), 7073 (Carter), 8357 (Cluster), 8537 (Coburn), 9344 (Begley), 10525 (Carey), 11120 (Dolnick), 12530, 12757 (Seff), 13323 (Dorsey), 13442 (Wolf), 14166 (Hall).

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1966.