

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the St. Louis-San Francisco Railway, that:

1. The Carrier violated the Agreement between the parties when, effective December 9, 1963, it abolished the position of telegrapher-ticket cashier at Fort Smith, Arkansas, and simultaneously transferred the work of said position to employees other than those holding seniority on the Central Division Seniority District; that

2. Mr. A. P. Baggs, who was the occupant of the position when it was abolished, shall be compensated for all losses sustained and expenses incurred by him as a result of being so suspended from his position; that

3. The position of telegrapher-ticket cashier be restored and that Mr. Baggs be re-assigned thereto, or the position be re-bulle-tined in line with applicable rules of the Agreement; and that

4. For each day the position has been or is filled by clerical employees and by the manager and wire chief at Fort Smith on an overtime basis, the senior idle telegrapher on the division, extra in preference, be compensated in the amount of one day's pay at the straight time rate in effect on the position of telegrapher-ticket cashier, Fort Smith, currently (February 21, 1964) \$2.5968 per hour.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to December 9, 1963, Claimant A. P. Baggs held position of Telegrapher-Ticket Cashier at Fort Smith, Arkansas, with assigned hours 3:30 P. M. until 12:30 A. M. (one hour off for lunch), Monday through Friday of each week. In addition, he was assigned to work his rest days and holidays on the following basis:

Saturdays — 5:30 P. M. until 7:30 P. M.

Sundays and Holidays — 5:30 P. M. until 8:30 P. M.

The telegrapher position in question here was abolished effective December 8, 1963. The clerical work was returned to employees of the clerical craft or class in accordance with Award 11554, and the work reserved exclusively by agreement to telegraphers, 45 minutes per day, was assigned to the Manager-Wire Chief in the relay telegraph office. On December 9, the Manager-Wire Chief was notified in accordance with Article II(7) of the Telegraphers' Schedule that the hours of his position would be:

7:15 A. M.-4:15 P. M., Monday through Friday\*  
7:30 A. M.-9:30 A. M., Saturdays  
7:30 A. M.-10:30 A. M., Sundays  
7:30 A. M.-10:30 A. M., Holidays  
7:00 P. M.-9:00 P. M., Seven days per week

\*Including lunch period.

In its letter of January 21, 1964, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A, the claimant Organization filed claim, stating, in part:

"The employees holding telegrapher rights to Central Division Line positions are entitled to fill the position of Telegrapher at Fort Smith, and those employees should now be compensated as though they had been permitted to do so. Mr. A. P. Baggs was the occupant of the Telegrapher position at Fort Smith when it was abolished, and he should be compensated for all losses sustained and expenses incurred by him account being suspended from the position. The position should be restored and Mr. Baggs should be re-assigned thereto or the position rebulletined in line with applicable agreement rules. For each day that the position has been or is filled by clerical employees and by the Manager and Wire Chief at Fort Smith on an overtime basis, the senior idle telegrapher on the Division, extra in preference, should be compensated in the amount of one day's pay, 8 hours at the straight time rate in effect for the position of Telegrapher-Ticket Cashier Fort Smith, currently \$2.5968 per hour."

The claim was declined.

The claim was appealed to the Carrier's highest officer designated to handle claims on February 21, 1964, and a copy of such appeal letter is attached hereto and made a part hereof as Carrier's Exhibit A-1. The claim was declined April 15, 1964, and a copy of the declination letter is attached hereto and made a part hereof as Carrier's Exhibit A-2. The additional handling given the claim on the property is outlined in correspondence, copies of same are attached hereto and made a part hereof as Carrier's Exhibits A-3, A-4, A-5, A-6, A-7, and A-8.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In September, 1958 the dispatching office at Fort Smith, Arkansas, was consolidated with the train dispatching offices at Springfield, Missouri, and at Tulsa, Oklahoma. A ticket clerk-cashier position was abolished, and a telegrapher-ticket cashier was established which took over the duties and responsibilities of the former position.

The Clerks' Organization processed a claim to this Board which was sustained on June 28, 1963, in our Award 11554. This claim was sustained on the basis that "Telegraphers had never . . . handled ticket sales at this location" and under those circumstances Carrier had violated Rule 60.

Following the adoption of Award 11554, the Carrier abolished the telegrapher-ticket cashier position, transferred the clerical work to employees within the scope of the Clerks' Agreement, and transferred work reserved exclusively to telegraphers to another employee within the scope of the Telegraphers' Agreement.

There is no Rule in the Agreement which prohibits Carrier from abolishing the position. Employees contend, however, (1) that "the volume of communication work was such that it could not properly be assigned on an overtime basis to another position under the agreement" and (2) the "seniority rights of all Central Division telegraphers were adversely affected when this work was removed to a Relay Office, where their seniority was not effective."

Employees' first position is based upon Awards 896 and 5235. In Award 896 we found that the "minimum of extra and overtime work performed represents more than 70% of the total assigned hours of the position." In Award 5235 we sustained part of the claim on the following basis:

"We have concluded, therefore, that the contract does not support the Carrier in its contention that a position may be abolished and a substantial portion of the work of such position regularly assigned to another to be performed during overtime hours, as was attempted here."

Was a substantial portion of the communication work of the abolished position "regularly assigned to another to be performed during overtime hours?" The record shows that the telegrapher who occupied the abolished position worked eight (8) hours on each of his regularly assigned five days, Monday through Friday, that he worked on a call basis two (2) hours on Saturdays, and also three (3) hours on Sundays and holidays. The maximum overtime assigned to him in any week was five (5) hours. The record also shows that the telegrapher in the Relay Office, to whom the communication was transferred, was assigned nineteen (19) overtime hours. This consists of two (2) hours daily overtime, two (2) additional hours on Saturdays and two (2) additional hours on Sundays and holidays. He was assigned fourteen (14) more hours of overtime a week than the incumbent of the abolished position.

Carrier replies that "there is no allegation that such 'work' was of a substantial amount" and that "no evidence whatever has been presented to show the amount of 'work' involved." There is no serious disagreement that the telegrapher in the Relay Office was assigned nineteen (19) hours of regular overtime each week and that this overtime resulted from the transfer of the communication work of the abolished position.

Fourteen additional hours a week is a substantial portion of the work performed by the abolished position. It is 31% more hours than those assigned to the incumbent of the abolished position. It is 35% of a normal forty (40) hour workweek.

We have no authority to restore the abolished position. This is a principle well established by this and other Divisions of this Board.

There is no showing that Claimant has incurred any expenses.

The senior idle telegrapher on the division can be readily ascertained from the Carrier's records, and is identifiable. A claim in behalf of such an employe is valid.

**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 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 violated the Agreement.

#### AWARD

Item 1 is sustained.

Item 2 is sustained to the extent that the Claimant be compensated in an amount equal to the difference between the amount he would have earned as the employe of the abolished position and the amount he actually earned while working at other positions, but not for expenses.

Item 3 is denied.

Item 4 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1966.