



Award No. 15004

Docket No. TE-13620

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES 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 & Western (Virginian Lines), that:

1. Carrier violated the parties' agreement because:

(a) By unilateral action, it changed the classification of a position at Suffolk, Virginia, from "Agent" to "Agent-Telegrapher";

(b) It required the Agent to perform telegraph service on October 15, 22, 29 and November 14, 1960, which work, prior to the reclassification of the agent's position, was performed by the first trick telegrapher-clerk position at Suffolk, Virginia.

2. Carrier shall now be required to:

(a) Restore the proper classification to the agent position.

(b) Compensate first trick telegrapher-clerk W. N. Foster a day's pay at time and one-half rate for each; October 15, 22, 29 and November 14, 1960.

EMPLOYEES' STATEMENT OF FACTS: The wage scale of the agreement between the parties, dated September 1, 1945, lists these four positions at Suffolk, Virginia; Agent; 1st Telegrapher-Clerk; 2nd Telegrapher-Clerk; and 3rd Telegrapher-Clerk. The 3rd Telegrapher-Clerk position was abolished on a date unknown at this time, but between 1949 and 1958. The 2nd Telegrapher-Clerk position was abolished in 1959.

The two remaining positions under the parties' agreement at Suffolk at this time are; an agent, an 1st telegrapher-clerk. The agent's position occupied at the time this claim arose by J. R. Dunning, was assigned to work six days per week Monday through Saturday, from 8:00 A. M. to 5:00 P. M. (DST), with one hour for lunch. Mr. Dunning worked Monday through Friday, and was relieved on Saturday when a relief employee was available, otherwise Mr. Dunning worked on such sixth day.

1960, and November 14, 1960, it required or permitted telegrapher duties to be performed by an employe not classified as one to perform such duties, at Suffolk, Va.

"Carrier shall compensate Telegrapher-clerk W. N. Foster, 1st trick Telegrapher-Clerk at Suffolk, Va. for each of the dates listed above for these violations, at the rate of time and one-half Suffolk T-C rate of pay."

The Carrier declined the claim. (Exhibits not reproduced).

OPINION OF BOARD: Mr. W. L. Gregg, Jr. occupied the position of Agent at Suffolk, Virginia, from April 26, 1956 until his death in September, 1960. Carrier then, on September 16, 1960, advertised a position of Agent-Telegrapher, Suffolk. The day the bulletin was issued, the District Chairman wrote a letter to the Chief Dispatcher in which he said that he hoped the wording was in error and requested that the advertisement be cancelled and the position be under the title Agent rather than Agent-Telegrapher. The Chief Dispatcher replied that there was no error because the position was advertised at Agent-Telegrapher when Mr. Gregg bid on it.

Prior to the merger of the Norfolk & Western Railway Company and the Virginia Railway Company on December 1, 1959, there was a first Telegrapher position in the six-day category. A year after the merger, this position was reduced to a five-day category with no relief coverage on Saturday or Sunday. The Agent performed telegrapher's work on Saturday.

The Brotherhood contends that Carrier violated the Agreement by unilaterally changing the classification of the position in question from Agent to Agent-Telegrapher. It relies upon Article 2(c) of the Telegraphers' Agreement which provides that changes in classification of positions be made only by agreement between the parties. It alleges that on the Saturdays of October 15, 22, 29, and November 14, 1960, the Agent performed telegrapher's duties, and therefore it requests that Carrier compensate first trick Telegrapher Clerk W. H. Foster a days pay at time and one-half rate for the four Saturdays.

It is Carrier's position that the bulletin of September 16, 1960, advertised the position of Agent-Telegrapher, which was the same position occupied by Mr. Gregg before his death, and therefore there was not a change in classification which required agreement between the Assistant to the President and the General Chairman under Article 2(c). Moreover, it asserts that Agents under the Telegraphers' Agreement have always performed telegraphy work when necessary and the Agent at Suffolk also performed this work within the scope of the Agreement.

Even though Mr. Gregg bid on a position which was advertised under the title Agent-Telegrapher, he did not perform telegrapher's work. Telegrapher Clerks at Suffolk handled telegraphy duties. Furthermore, the Agreement lists the position as Agent; it does not include a position of Agent-Telegrapher at Suffolk. A change in classification of a position requires agreement by the parties in accordance with Article 2(c). The record includes no evidence that such an agreement had been entered into and therefore we find that the position was not reclassified.

When Mr. J. R. Dunning assumed the position advertised in the bulletin of September 16, 1960 as Agent-Telegrapher, he performed telegrapher service on the Saturdays in question. Such work was in violation of a memorandum of agreement interpreting Article 2 which reads as follows: "... it is agreed that when work is to be assigned to an existing position and such work is not within the classification of the position, such assignment of work will not be made until thirty (30) days after notification to the General Chairman of intention to assign such work." Carrier failed to comply with this provision before assigning the additional telegraphy work on Saturdays to the agent.

For the reasons stated, we hold that the Agreement was violated and the first trick Telegrapher Clerk W. H. Foster is allowed compensation for the four Saturdays on a call basis. In view of the fact that no change in classification of position occurred, we do not find it necessary to consider the request in paragraph 2(a) of the Statement of 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 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 herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.