

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

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

FIRST:

1. Carrier violated the agreement between the parties hereto when on June 14, 1961, it declared abolished the position of agent-telegrapher at Depew, New York, when, in fact, the work of such position remained and regularly was required to be performed Monday through Friday of each week thereafter.

2. Carrier violated the agreement between the parties hereto when commencing at 7:59 A. M. (EDT), June 14, 1961 and continuing thereafter it required the occupant of the first trick position of towerman-telegrapher at Niagara Junction, New York, to assume, undertake and perform the duties of the Depew agent-telegrapher in addition to his regular duties as towerman-telegrapher.

3. Carrier violated the agreement between the parties hereto when commencing at 7:59 A. M. (EDT), June 14, 1961, and continuing thereafter it merged, combined and consolidated the work, services and duties of the position of agent-telegrapher at Depew, New York, with the work, services and duties of the first trick towerman-telegrapher at Niagara Junction, New York, a point approximately one-half mile from the Depew freight station.

4. Carrier shall be required to restore the position of agent-telegrapher at Depew, New York, to the same status as that prevailing prior to June 14, 1961.

5. Carrier shall compensate W. J. Keegan, Jr., for all wages lost and expenses incurred as a result of the violations hereinbefore set out, as provided in the agreement.

6. All other employees displaced as a result of violations hereinbefore set out shall be compensated for all wages lost and expenses incurred as provided in the agreement.

7. Senior idle employe, extra in preference (day-to-day basis), shall be paid one day's pay at the rate applicable to the Depew, New York, agent-telegrapher position for each day, Monday through Friday of each week, beginning Wednesday, June 14, 1961 and continuing thereafter until the violations in this case are corrected.

8. Joint check of the Carrier's records to be ordered to ascertain the names and amounts due the employes as set forth herein.

SECOND:

(a) Carrier violated the provisions of Article V of the August 21, 1954 Agreement by failing to render a timely decision in accordance therewith.

(b) As a consequence of the violation cited in (a), Carrier shall be required to allow the claim as presented.

EMPLOYEES' STATEMENT OF FACTS: The facts of this case are herein outlined in the chronological order of the case record. The issue giving rise to this claim was precipitated by the May 29, 1961 letter sent by Mr. R. C. Becker, Assistant Supervisor of Operations, addressed jointly to the Agent at Depew, New York and the first trick towerman at Niagara Junction, New York, which read as follows:

"Jersey City, New Jersey
May 29, 1961

Mr. W. J. Keegan - Agent
Depew, New York

Mr. E. Magee
1st trick towerman
Niagara Junction, New York

Confirming telephone advice given you today, this is to advise that effective Wednesday, June 14, 1961 the Agency will be moved to Niagara Junction Interlocking, New York, and the work of the first trick Towerman and Agency will be consolidated, the duties of the Agency being absorbed by the first trick Towerman.

Mr. Magee will advise promptly if he wishes to remain on position as outlined above.

In the event Mr. Magee desires to keep the position as outlined, he will be given ten (10) days posting allowance to qualify as an Agent and prepare himself for examination by Traveling Auditor.

/s/ R. C. Becker
R. C. Becker
System Supvr. Operations

cc: Mr. D. J. North, General Chairman, ORT
Mr. R. H. Donner, District Chairman, ORT
Mr. J. E. Crowley"

Upon receipt of his copy of Mr. Becker's letter, General Chairman D. J. North wrote Mr. Becker on June 3, 1963, as follows:

As a consequence of the discontinuance of all passenger service, plus the discontinuance of interstate LCL freight and the small volume of freight carloads handled, the need for a separate building at Depew, New York for freight and passenger business no longer existed. The Carrier, therefore, closed the freight and passenger station building and moved the freight office and the work which remained, along with the Agent-Telegrapher position, into the building occupied by the Towerman-Telegrapher at Niagara Junction, New York.

The relocation of the Agency to the Niagara Junction tower building resulted in having two employees on duty, i.e., an Agent-Telegrapher and a Towerman-Telegrapher, on first trick, where only one was needed. Carrier anticipated this, and notified the employees under date of May 29, 1961, that their work would be consolidated effective June 14, 1961. (See Carrier's Exhibit A, letter of May 29, 1961.)

The Organization filed claims in this case, stating that the Carrier abolished the Agent-Telegrapher position and that unnamed and unknown claimants lost wages and expenses. Carrier notified the Organization its claim was without merit and it was denied.

As concerns the SECOND part of this claim:

Carrier emphatically denies it failed to comply with the provisions of Article V of the August, 1954 Agreement by failing to timely render a decision in this case. Carrier's record clearly shows that decision was rendered and mailed April 3, 1962, in connection with this case, and that this was within the time limits required.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner moves that the Claim be allowed as presented on the grounds that the Carrier's highest officer failed to deny it, giving his reasons in writing, within 60 days plus an agreed-upon extension of 30 days, as required by Article V of the August 21, 1954 National Agreement. The appeal was received by the highest officer on January 8, 1962. This is the date from which the time limitation runs. See National Disputes Committee Decision No. 16. In computing the time limitation the day of receipt by the highest officer is not counted; but, the written denial must be in the hands of the organization not later than on the last day of the time period. The 90 days limitation in this case terminated on April 8, 1962. The General Chairman received the denial on April 9. Since this is a continuing Claim, we find that Carrier violated the Agreement, but its liability arising from the violation stopped on April 9, 1962. NDC Decision 16.

On June 14, 1961, Carrier consolidated the position of Agent-Telegrapher at Depew, New York, with that of first trick Towerman-Telegrapher at Niagara Junction. Petitioner contends that this unilateral action on the part of Carrier: (1) violated an agreement dated May 18, 1938; (2) violated Rule 2 of the Agreement because Carrier discontinued a position established by the Agreement without negotiation between and agreement by the parties as provided for in Rule 34.

The May 18, 1938 agreement provides that "No part time stations will be created" except "with a mutual understanding"; and, "Hereafter, agencies

will be discontinued only by negotiation and agreement." The consolidation here involved did not fall within either of those categories. We find, therefore, that the May 18, 1938 agreement is irrelevant.

Following the Rules of the basic Agreement, we find on pages 29-38 of that document, under the heading "Rates of Pay—Effective September 1, 1947", rates of pay for classifications at specific locations. Included in the list are the two positions here involved. Petitioner says that this must be held to have the effect of negotiating the positions into the agreement, and, therefore, the positions cannot be taken out of the Agreement without negotiation and agreement; and, to do so is in violation of Rule 34—Effective Date and Changes. We do not agree. As the caption makes clear, the purpose of the list is to memorialize agreed upon "Rates of Pay" for positions existing at the time of execution of the agreement. It does not encumber management's prerogative to abolish or consolidate those positions or establish new positions. Nor, do we find any Rule in the Agreement which estops Carrier from taking such actions. Rule 25 of the Agreement does, indeed, contemplate that consolidations, after the execution of the Agreement, could and would be effected by Carrier without the previous restraint of negotiation and agreement.

Petitioner argues that the consolidation violated the following:

"RULE 2. CLASSIFICATION

(a) Established positions shall not be discontinued and new ones created under the same or different classifications covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of rules contained herein.

(b) Where existing payroll classifications do not conform to Rule 1, employees performing service in the classes specified therein shall be classified in accordance therewith."

This rule is applicable only when the purpose of Carrier's action is: (1) "for the purpose of reducing rates of pay"; or, for the purpose of "evading the application of rules contained" in the Agreement. The record contains no evidence that Carrier had in mind either of those purposes in taking the action complained of; or, that the effect of the action, even without intent, accomplished such purposes. We will deny the Claim on the merits.

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 Carrier did not violate the Rules Agreement.

That Carrier did violate the August 21, 1954 Agreement.

AWARD

Claim denied on the merits; but, sustained to the extent of liability prescribed in NDC Decision 16.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.