Award No. 15482
Docket No. TE-13079

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when, on or about July 29, 1960, it purportedly abolished the position of Agent-Telephoner at Ft. Lyon, Colorado, and required the occupant of the Agent-Telephoner position at Ft. Lyon, Colorado, to displace the occupant of the Agent-Telephoner position at McClave, Colorado, and, thereafter on all subsequent work days, service both stations.

2. Carrier shall be required to compensate J. M. Arnold, or his successor, an additional day's pay for each occasion on which he performs service at Ft. Lyon and McClave on a day-to-day basis, until the violations are corrected and to reimburse him for all expenses incurred by reason of the performance of service at other than Ft. Lyon, Colorado, beginning July 29, 1960.

3. Carrier shall be required to compensate J. D. Cranford in the amount of a day's pay at the straight time rate of the McClave position for each day, Monday through Friday, beginning July 29, 1960, and continuing thereafter on a day-to-day basis until the violations are corrected; and at the overtime rate for all work performed outside the assigned hours of the McClave position plus all expenses incurred which would not have been sustained or incurred if the Agreement violations had not occurred, beginning July 29, 1960.

4. Carrier shall be required to compensate all other employes displaced as a result of violations hereinbefore set out in the same manner as outlined in paragraph 3.

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

cannot pre-empt the federal jurisdiction, covered by the Railway Labor Act in the field of collective bargaining agreements governing rates of pay and working conditions of employes of the Carrier. See Award 3738 and others.

The relation of a state law to a collective bargaining agreement made under the Railway Labor Act has been decided by the courts. The Supreme Court of the United States disposed of this question in Railway Employes' Department, et al v. Hanson, et al (351 U. S. 225) where it said:

'. . . a Union Agreement made pursuant to the Railway Labor Act has, heretofore, the imprimatur of the federal law upon it and by force of the supremacy clause of Article VI of the constitution could not be made illegal nor vitiated by any provision of the laws of a State.'

Therefore, it is clear that the fundamental key or pivotal question is the violation of the Agreement.

Yours truly,

/s/ D. A. Bobo
General Chairman"

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the same parties and issues as in Award No. 15480.

Part 1 of the claim will be sustained.

Parts 2, 3, 4 and 5 of the claim are sustained to the extent that the Claimants' shall be reimbursed and made whole to the extent of the loss sustained by them resulting from the abolition of the position involved herein.

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 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 Agreement has been violated.

AWARD

1. Part 1 of the claim is sustained.

2. Parts 2, 3, 4 and 5 of the claim are sustained to the extent that Claimants' J. M. Arnold, J. D. Cranford and other employes shall be made whole for whatever monetary loss they suffered as a result of the abolition of

the agent-telegrapher position at Ft. Lyon, Colorado. Each shall be compensated with a sum equal to the difference between what they earned and what they would have earned had the position not been abolished.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1967.

CARRIER MEMBERS' DISSENT TO AWARDS 15480, 15481, 15482
DOCKETS TE-12636, TE-12703, TE-13079
(Referee Kabaker)

What was said in Carrier Member's Dissent to Award 15358 (which the majority followed in the instant cases) applies equallly to Awards 15480, 15481 and 15482. We think these awards are ill-founded and we, therefore, dissent.

W. B. Jones
R. A. DeRossett
C. H. Manoogian
J. R. Mathieu
W. M. Roberts

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