

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when effective 11:59 P.M., June 10, 1962, it declared abolished the positions of first and second shift Train Directors, Council Bluffs, Iowa (Avenue C) without in fact abolishing the work thereof, and

2. The Carrier violated and continues to violate said Agreement when commencing June 11, 1962, it required or permitted employes not covered by the Agreement to perform work of the purportedly abolished positions; and

3. Carrier shall, commencing October 11, 1962, and on a continuing day to day basis, so long as Carrier permits the violative practices to continue, pay the senior idle employe, extra in preference, on the district (identity to be established by a check of Carrier's records), eight (8) hours' pay at the rate of the abolished positions at Avenue C, Council Bluffs, Iowa, for each eight (8) hour tour of duty of the abolished positions, except on holidays when such employes would be entitled to the holiday allowance currently in effect.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Chicago and North Western Railway Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Organization or Employees, effective April 1, 1950, and as otherwise amended. Copies of said Agreement, as required by law, are assumed to be on file with this Board, and are, by this reference made a part hereof.

Prior to June 10, 1962, Carrier maintained an interlocking facility at Avenue C, Council Bluffs, Iowa. This facility was manned by two (2) covered employes classified as train directors-telegraphers. The first shift was

destined for the west coast were handled by yard crews to Council Bluffs for interchange with the Union Pacific or other connecting line roads. The majority of the traffic handled on these trains has been in all recent years traffic for west coast connections.

Beginning in 1961 and early in 1962 in order to speed up certain traffic to and from the west coast via the UP, the C&NW established a major interchange with the UP at Fremont, Nebraska. This was accomplished by routing certain time freights from Missouri Valley north to California Junction, then west via Blair to Fremont. This resulted in saving approximately one day on both east and westbound traffic. It also resulted in reducing the number of trains operating into and out of Council Bluffs.

Prior to June 10, 1962, the carrier had telegraphers employed at North Yard, Omaha, Nebraska; at Council Bluffs (Avenue C); and at Missouri Valley. Prior to June 10, 1962 communications between Council Bluffs or Omaha and other points to be handled by telegraphers were handled by either the telegraphers at Council Bluffs or at Omaha.

On June 10, 1962, the telegrapher positions at Council Bluffs (Avenue C) were abolished. Subsequent to the abolishment of these telegrapher positions all the work formerly performed by the telegraphers at Avenue C (with the exception of the throwing of certain switches which is now performed by train crew members) is now performed by either the telegraphers at Missouri Valley, or at North Yard, Omaha.

On December 3, 1962, the claim in this case was first presented to the carrier's Superintendent by the District Chairman of the ORT. A copy of the letter filing this claim is attached as Carrier's Exhibit A. The claim was denied by the carrier's Superintendent, was appealed to the carrier's Director of Personnel, and has been denied by the Director of Personnel.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that this claim, which is based on abolishment of positions on June 10, 1962, is barred by Article V of the August 21, 1954 Agreement, because it was not filed until December 3, 1962.

Employees argue that this is a continuing claim and may, therefore, be filed at any time, subject to limitation of retroactivity as set forth in Section 3 of the time limit rule.

We have dealt with the issue resulting from this difference of opinion in a number of awards, such as 10532, 11167, 12054, 12984, 14131, 14450, 14826, 15134 and 15495. These awards uniformly reject the argument made by the Employees.

On the basis of precedent established by the line of awards referred to, we must dismiss the claim without consideration of its 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 the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.