

Award No. 16729
Docket No. TE-15964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk Southern Railway, that:

1. Carrier violated the Memorandum Agreement of October 26, 1962, when, effective January 1, 1964, it without conference and agreement discontinued the dualized Oakboro-Midland agency, placing the Midland agency under the jurisdiction of the agent at Charlotte, North Carolina (not covered by Telegraphers' Agreement) and reduced the Oakboro-Midland scheduled rate of pay from \$2.51 per hour to the former Oakboro rate of \$2.4408 per hour.

2. Carrier be required to restore Midland to the agreed-to dualized status with Oakboro agency, and restore the \$2.51 per hour rate of pay, plus wage increases provided by National Agreement of November 20, 1964, beginning January 22, 1965 and continuing until such violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: The dispute involved here is predicated upon various provisions of the collective bargaining agreement, and amendments thereto, entered into by the parties effective August 1, 1937 as reprinted April 1, 1961 to include changes in effect as of the date of reprint. Union submitted its claim to the proper officer of the Carrier, at the time and in the usual manner of handling, as required by agreement rules and applicable provisions of law. The dispute was discussed in conference between representatives of the parties hereto on March 22, 1965.

The controversy arose on December 31, 1963, when the Carrier, acting unilaterally and without consulting with the Union, declared a previously agreed-to dual agency arrangement to be no longer in effect insofar as it applied to the stations of Oakboro and Midland, North Carolina. With this announcement, it proceeded to reduce the rate of pay of the Agent-Operator position of the dualized agency and change the working conditions thereof by removing part of the work of that position to the position of Agent at Charlotte, North Carolina. The latter position is not covered by the Agreement.

ploye being assigned to work the two (2) or three (3) agencies or positions shown in each group. The rate of pay for each consolidated position is shown below opposite each group of agency stations.

Consolidated Agencies or Positions

Oakboro with Midland

Agreed Rates of Pay

\$2.51 per hour

* * * * *

This agreement culminated from Docket No. R-4, Sub 49, issued by the State of North Carolina Utilities Commission October 9, 1962 authorizing this Carrier to reduce the hours of the agency at Midland, N. C. to one per day and the hours of the Oakboro, N. C. agency to six per day. This permitted Carrier to assign one agent to perform the duties at both stations with one hour travel time paid for to complete the eight hour day. To compensate this agent for the responsibility of two agencies including accounting and making of various reports for each, the agreed upon rate of pay was as above stipulated.

These two stations were operated as a dual agency from December 1, 1962 until January 1, 1964 when the agency at Midland was completely closed on authority of the State of North Carolina Utilities Commission, Docket No. R-4, Sub 54, dated October 30, 1963, said order reading in part as follows:

"Accordingly, IT IS ORDERED

1. That the application of Norfolk Southern Railway Company in this docket be, and the same is hereby, approved.
2. That Applicant be permitted to close its agency stations at Grantsboro (Grants) and at Midland and to make its agency stations at New Bern and at Charlotte the governing agency stations respectively therefor."

When authority was given by the Utilities Commission to close the station at Midland, N. C., the need for a dualized agent to handle both Oakboro, N. C. and Midland, N. C. agencies no longer existed and the dualized agent, then H. R. Waters, returned to his previous assignment of agent at Oakboro, N. C. putting in a full time eight hour day at that station. When this occurred, the rate of pay applicable to the single agency at Oakboro, N. C. of \$2.4408 per hour was restored as the agent at Oakboro, N. C. no longer had any duties to perform at Midland, N. C.

When the station at Midland, N. C. was closed, it was reduced to the status of a blind siding and only carload business thereafter was handled. The small amount of clerical work entailed in the handling of carload business was put under the jurisdiction of the agent at Charlotte, N. C.

OPINION OF BOARD: The original agreement between the parties was effective August 1, 1937. Under its "Appendix A" was a Wage Scale listing various stations, positions and rates, among which were separate stations at Oakboro and Midland, both taking a position designated "A-O" and providing

for identical straight time compensation of \$2.338 and time and one-half pay of \$3.507.

Given such a situation, our decisions clearly establish that Carrier had three managerial prerogatives: (1) either position, or both positions, could be abolished (Awards 5803 and 13323), (2) either station, or both stations, could be closed (Award 5803) or (3) the stations could be dualized. (Awards 12486)

Our decisions further hold that when a station is closed, the remaining work may be assigned to employes not covered by the Telegraphers' Agreement.

Effective October 26, 1962, Carrier and the Organization executed a Memorandum Agreement which provided for the dualization of the Oakboro and Midland agencies and positions. The issue which we must decide is this: Did this Memorandum Agreement operate to confer on the Telegraphers the right to demand that the dualized station be perpetuated unless any change were authorized by the Brotherhood?

The Memorandum Agreement contains 12 pages. We have searched it carefully and in vain to find support for the Organization's contention that it conferred contractual rights superior to those in the original contract.

The amendment provides "... agency positions . . . specified below may be consolidated as shown below . . .," following with a listing of "Oakboro with Midland" and an indicated agreed rate of pay of \$2.51 per hour. We have already shown that Carrier had the right to combine Oakboro with Midland. The Organization argues forcefully that the amended agreement contains rights for which it has bargained and that one of those rights is to demand the continuation of the dualized agency and position. The inference is that they have given up some previously existing right in exchange for their allowing the Carrier to dualize the stations. The argument is supported neither by reason nor by any language in the agreement, which is concerned primarily with laying down rules relating to seniority, pay and working conditions so as to meet the changed conditions arising from the several dualizations set forth in the agreement.

The relief herein sought is that we restore Midland to the pre-existing dualized status with Oakboro. Even if we were so disposed, we have no authority to do so. Award 15521. The claim will be denied.

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 was not violated.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1968.

DISSENT TO AWARD 16729, DOCKET TE-15964

The majority has committed palpable error in this award.

First, since the primary issue arose solely from a special Memorandum of Agreement the first three paragraphs of the "Opinion of Board" are irrelevant and therefore surplusage.

Second, even though it be irrelevant, the third paragraph must be specifically challenged. Our decisions do not hold that when a station is closed the remaining work may be assigned to employees not covered by the Telegraphers' Agreement. Referee Carter would be incensed at the obvious distortion of his conclusions in Award 5803.

Third, the decisive conclusion, being based on irrelevant assumptions, is fallacious for all to see.

Fourth, the final paragraph of the Opinion of Board is clearly improper. What purpose could be served by discussing "relief" when the decision is that none is indicated? Furthermore, the statement concerning the Board's authority is completely at variance with reality. This was the first instance, to my knowledge, that the Board has ever been asked to determine the right of a Carrier to dissolve a dualized agency that had been created by a special agreement. Therefore, awards dealing with claims for restoration of abolished positions are not in point. But if the majority, in its obvious haste to support the Carrier, were going to consider such awards it should have asked for, and considered, those which are contrary to the one cited. This Board has, in some instances even without the "assistance" of a referee, ordered the restoration of abolished positions. No one, other than those with faulty knowledge or axes to grind, has even doubted our authority to require positions restored when they have been abolished in violation of an agreement.

The Agreement in the instant case was violated, not only by discontinuance of one segment of an agreed upon dualized agency, but by the manner in which it was done and the improper reassignment of the remaining work. The usual and proper disposition of such a case is a decision placing both parties in the relative positions they occupied prior to the improper action.

The Board has frequently given effect to the truism that what is created by agreement can only be extinguished by the same means. This award is palpably at variance with that principle and, therefore, I dissent.

J. W. Whitehouse
Labor Member

MAJORITY'S REPLY TO DISSENT

Once upon a time there was a boy who indulged in the sport of crying a false alarm of "Wolf!" then sitting back to enjoy the frustration of his frightened neighbors who rushed to his aid only to find there was no wolf. From this situation developed a credibility gap such that when the wolf arrived, the lad's cries were ignored and the wolf devoured him.

Once upon a time there was a labor member of the Third Division who loved to dissent and thus to enjoy the rhetoric he spewed upon the record above his name. Sometimes he was inclined to venom and alluded to referees with "faulty knowledge or axes to grind."

How fortunate it is for the parties whose disputes this Board resolves that most referees will neither be intimidated by spurious dissents, however ugly in tone, nor will they cease to give fair and impartial consideration to the claims of craftsmen whom this fine old gentleman endeavors to represent.

David H. Brown
Referee