

Award No. 16957

Docket No. TE-15957

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

David H. Brown, Referee

## PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago and North Western Railway (StPM&O), that:

1. Carrier violated the terms of an Agreement between the parties hereto when it failed to fill the position of Second Telegrapher Job No. 005 "A" Relay Office, St. Paul, Minnesota from January 11 through March 14, 1965, for five (5) working days each week, Monday through Friday.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate the following idle telegraphers on the dates listed, eight (8) hours at the straight time rate for each day the position was not filled during the period indicated:

| Date             | Claimant        |
|------------------|-----------------|
| January 11, 1965 | W. C. Ridley    |
| January 12, 1965 | C. J. Frieberg  |
| January 13, 1965 | R. E. Byington  |
| January 14, 1965 | N. D. Miller    |
| January 15, 1965 | L. M. Salmore   |
| January 18, 1965 | W. C. Ridley    |
| January 19, 1965 | C. J. Frieberg  |
| January 20, 1965 | R. E. Syington  |
| January 21, 1965 | N. D. Miller    |
| January 22, 1965 | L. M. Salmore   |
| January 25, 1965 | R. Z. Storm     |
| January 26, 1965 | R. Z. Storm     |
| January 27, 1965 | R. W. Freer     |
| January 28, 1965 | R. W. Freer     |
| January 29, 1965 | K. O. Bjerkeset |
| February 1, 1965 | W. C. Ridley    |

|                   |                 |
|-------------------|-----------------|
| February 2, 1965  | R. Z. Storm     |
| February 3, 1965  | R. W. Freer     |
| February 4, 1965  | R. W. Freer     |
| February 5, 1965  | K. O. Bjerkeset |
| February 8, 1965  | R. Z. Storm     |
| February 9, 1965  | R. Z. Storm     |
| February 10, 1965 | R. W. Freer     |
| February 11, 1965 | R. W. Freer     |
| February 12, 1965 | K. O. Bjerkeset |
| February 15, 1965 | R. W. Freer     |
| February 16, 1965 | K. O. Bjerkeset |
| February 17, 1965 | K. O. Bjerkeset |
| February 18, 1965 | R. Z. Storm     |
| February 19, 1965 | R. Z. Storm     |
| February 22, 1965 | Holiday Blank   |
| February 23, 1965 | K. O. Bjerkeset |
| February 24, 1965 | K. O. Bjerkeset |
| February 25, 1965 | R. Z. Storm     |
| February 26, 1965 | R. Z. Storm     |
| March 1, 1965     | R. W. Freer     |
| March 2, 1965     | K. O. Bjerkeset |
| March 3, 1965     | K. O. Bjerkeset |
| March 4, 1965     | R. Z. Storm     |
| March 5, 1965     | R. Z. Storm     |
| March 8, 1965     | R. W. Freer     |
| March 9, 1965     | K. O. Bjerkeset |
| March 10, 1965    | K. O. Bjerkeset |
| March 11, 1965    | R. Z. Storm     |
| March 12, 1965    | R. Z. Storm     |

**EMPLOYES' STATEMENT OF FACTS:** An Agreement between the Chicago and North Western Railway Company (Chicago, St. Paul, Minneapolis and Omaha Railway - TC Division), hereinafter referred to as Carrier, and its employes represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employes and/or Union, effective March 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The question to be decided in this case is whether or not the Carrier, under Article II, Section 1(a) of Memorandum of Agreement between the parties of September 28, 1962, reading as follows:

Position 005 was not rebulletined. Position 005 was actually abolished at the end of the 90 day notice period. From January 11, 1965 to the end of the 90 day period, or March 14, 1965, Position 005 was not filled because there were no extra telegraphers available to fill the position. During this period any work which would have been performed by any employee working Position 005 was performed by other telegraphers assigned in "A" office.

Claim has been presented in this case on behalf of certain named individuals whom the General Chairman identified as "idle telegraphers" and whom he says "were all idle on their assigned rest days and were in the area available" based on the contention that they should have been called on their rest day to fill Position 005. Claim has been denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to the date of this claim Carrier maintained at St. Paul, Minnesota, a telegraph office known as "A" office where around the clock telegraphy service was operative seven days a week. In addition to regular around the clock assignments, one independent assignment, Job 005, was worked 5 days per week, 10 A. M. to 6 P. M.

The work diminished to the point that it was no longer necessary to maintain the position represented by Job 005. Accordingly, on December 15, 1964, Carrier notified the General Chairman of the TCU of its decision to permanently discontinue Position 005. There is no question but that Carrier had the right to do so under the provisions of Article II, Section 1(a) of the Memorandum of Agreement of September 28, 1962.

Occupying Position 005 at the time of the aforementioned notice to the General Chairman was Mr. J. H. Morris, who voluntarily retired from service on January 8, 1965.

The aforementioned Article II, Section 1(a) of the Memorandum of Agreement of September 28, 1962, provides as follows:

"In any case where the carrier decides to 'permanently discontinue a position,' . . . the carrier will notify the General Chairman in writing. The period of notice . . . is ninety days."  
(Emphasis ours.)

The issue here is whether or not the requirement of ninety days' notice was intended to perpetuate the affected position when, as here, the regular occupant of the position has retired and there are no available extra telegraphers to fill the position.

The answer is found in a further reading of the provisions of Article II, Section 1(a):

"During such period, [the 90 days] the carrier's representative will be available for conference with the General Chairman to discuss any facts or representations the General Chairman may see fit to submit as to the wisdom and necessity of such job elimination, and to discuss any questions as to the manner in which or extent to which employees represented by the organization may be affected by such change . . ." (Emphasis ours.)

The wisdom or necessity of the job elimination was not questioned; no employe was adversely affected by the change. The rule was intended to give a measure of protection to the occupant of the position to be abolished, Mr. Morris in the instant case. Mr. Morris is not our Claimant. Under the circumstances, no one else can claim a violation of the agreement.

**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.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1969.

#### DISSENT TO AWARD 16957, DOCKET TE-15957

I cannot agree that this Award gives proper effect to the Agreement provision involved.

The record provides ample grounds for holding that the 90-day notice provision was intended to protect all employes' work rights for that period of time. The Carrier itself, in argument to the tribunal which imposed the provision, plainly understood the notice period to constitute a "job freeze" for the time involved, contending for a 30-day rather than a 90-day notice period.

Failure of the majority to give effect to the plain intent of the notice provision constitutes error, and I dissent.

J. W. Whitehouse  
Labor Member

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