



Award Number 17376

Docket Number TE-15008

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, 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:

1. Carrier violated the Agreement between the parties hereto when, effective Tuesday, April 23, 1963, it declared abolished the position of Car Distributor-Telegrapher (NJ&L District) at Jersey City, New Jersey, 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 on April 23, 1963 and continuing thereafter it required the occupant of the Freight Agent position at Royce, New Jersey, to assume, undertake and perform the duties of the Jersey City, New Jersey, NJ&L District Car Distributor-Telegrapher in addition to his regular duties as Freight Agent.
3. Carrier violated the Agreement between the parties hereto when commencing on April 23, 1963, and continuing thereafter it merged, combined and consolidated the work, service and duties of the position of Car Distributor-Telegrapher (N J & L District) at Jersey City, New Jersey, with the work, services and duties of the Freight Agent at Royce, New Jersey, a point approximately 37 miles from Jersey City.
4. Carrier shall be required to restore the position of Car Distributor-Telegrapher (NJ&L District) at Jersey City, New Jersey, to the same status as that prevailing prior to April 23, 1963.
5. Carrier shall compensate Mrs. Mae Brydon 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 employee, extra in preference (day-to-day basis), shall be paid one day's pay at the rate applicable to the Jersey

City, New Jersey NJ&L District Car Distributor-Telegrapher position for each day, Monday through Friday of each week, beginning Tuesday, April 23, 1963, 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 employees as set forth herein.

EMPLOYEES' STATEMENT OF FACTS: The action taken by Carrier, giving cause for the herein claim, is briefly set forth in Paragraphs 1, 2 and 3 of the Statement of Claim. Extensive correspondence has been exchanged between the parties in the property handling of this dispute, copies of each letter being reproduced and appended hereto as ORT Exhibit Nos. 1 through 16.

Said documentation will disclose that Carrier was forewarned, when it first came to the Committee's attention, that its contemplated action would be violative of the agreement terms. Carrier paid no heed to the Employees' request that the planned action be postponed until negotiations could be had and agreement reached (page 2 of ORT Exhibit 2). As evidenced by Carrier's letters identified as ORT Exhibits 3 and 4, it instituted its program without employment of collective bargaining procedures. The correspondence exchanged between the parties will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board but failed of settlement.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: There is an agreement between the parties in this dispute bearing effective date of February 1, 1948, a copy of said agreement is on file with the Third Division, National Railroad Adjustment Board and by reference is made a part of this submission.

This claim arose at Royce, New Jersey, a point on the main line of this carrier. Royce, New Jersey, is part of the NJ&L seniority district, extending from New Market, New Jersey, to Penn Haven Junction, Pennsylvania, a distance of 101.5 miles. The position of Car Distributor, the position of Freight Agent, Royce, New Jersey and all employees involved in this claim are part of the NJ&L seniority district.

At the time of the writing of the first Telegraphers' agreement on this property, this railroad was divided into seven operating divisions with seven seniority districts covering the territory of the operating divisions. The seven present Telegrapher agreement seniority districts have the same territory coverage today as the original seven operating divisions. In other words, the seniority districts have not changed. The NJ&L division office was located in Jersey City, New Jersey. In the wage scale appendix of the January 1, 1935 Agreement is the following:

<u>Location</u>	<u>Position</u>	<u>Rate Per Hour (Cents)</u>
Jersey City	Car Distributor-Telegrapher	81.50
Easton	Car Distributor-Telegrapher	80.00

During 1939, the NJ&L operating division offices in Easton were discontinued and the NJ&L Car Distributor position, located at that point, was

"Further, your claim is being progressed for two employes, each date. In part 5 you make the claim that Mae Brydon be compensated for all wages lost because the Car Distributor-Telegrapher position was abolished. Then, in part 7, you make an additional claim for one day's pay, each date, for the senior idle employe, extra in preference. You cite no rule which permits two telegrapher agreement employes to be on one position at the same time, and both parts 5 and 7 are rejected for this reason.

"Further, there is no rule in the Telegraphers' Agreement which limits or restricts the duties that may be performed by Freight Agents. The duties of a Freight Agent are those assigned to him by management; the duties of the Freight Agent at Royce, N.J., on and after April 23, 1963, first date of this claim, included all the remaining car distributor-duties of the abolished position, duties properly coming under the Telegraphers' Agreement. There is no basis to your contention that an agent can only perform certain duties and the May 18, 1938 letter-agreement was violated.

"The claim in the instant case is baseless as to rule or agreement and is hereby denied in its entirety."

In letter dated August 31, 1963, the General Chairman advised the Chief of Personnel this claim was now with President Leighty, removing same from further discussion on the property.

(Exhibits not reproduced)

OPINION OF BOARD: The statement of claim, the facts, the parties and the basic issues in this matter are identical to those raised and disposed of in Award 15443 (Dorsey). This Board concurs in and adopts that finding as controlling.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1969.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.