



Award Number 17440

Docket Number TE-15078

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD—SOUTHERN DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (CCC & StL District), that:

Claim No. 1

1. The Carrier violated the parties' Agreement when on October 27, 1962, it declared abolished the third trick telegraph position at Sheldon, Illinois without in fact abolishing the work thereof, which was transferred to employees not covered by the scope of the Agreement and/or employed by another railroad at Sheff, Indiana (New York Central Lines West) and St. Anne, Illinois (Chicago & Eastern Illinois Railroad).
2. The Carrier shall, because of the violation set out above, restore the work to the parties' Agreement.
3. The Carrier shall, in addition to the foregoing, compensate Mr. F. W. Silvers in accordance with the provisions contained in Article 10 and all other applicable rules of the Agreement between the parties, for any loss of wages and additional expenses incurred by reason of the Carrier's violative acts for each day that such violation continues.
4. The Carrier shall also compensate Mr. G. I. Reed and any other telegraphers adversely affected by reason of the improper abolishment of the third trick telegrapher position at Sheldon, Illinois, under the provisions of Article 10 and any other applicable rules of the Agreement between the parties, for any loss of wages or expenses incurred, so long as the violation continues. The dates and amounts due such employees to be determined by a joint check of the Carrier's records.

Claim No. 2

1. The Carrier violated the parties' Agreement when on December 27, 1962, it eliminated the train order, manual block and other duties of the first and second trick operators at Sheldon, Illinois. That train order and manual block work at Sheldon, Illinois has been work that was performed by operators at that point

for a period of time dating back to sometime prior to 1918. The work formerly done by the operators at Sheldon, Illinois has not been eliminated but has been transferred and/or diverted to employees not covered by the scope of the Agreement and/or employed by another railroad at Sheldon, Illinois (Toledo, Peoria & Western Railroad), at St. Anne, Illinois (Chicago and Eastern Illinois Railroad), at Sheff, Indiana (New York Central Lines West).

2. The Carrier shall, because of the violations set out above, restore the work to the parties' Agreement.
3. The Carrier shall, in addition to the foregoing, compensate two (2) senior available employees for one (1) day's pay at the Sheldon rate for each day that work is transferred and/or diverted from first and second tricks at Sheldon, Illinois, commencing on December 27, 1962 and continue to compensate them until the violation ceases to exist, this in accordance with the provisions contained in Article 10 and all other applicable rules of the Agreement between the parties.

Claim No. 3

1. The Carrier violated the parties' Agreement when on April 17, 1963, it declared abolished the first and second trick telegraph positions at Sheldon, Illinois, without in fact abolishing the work thereof, which was transferred to persons not covered by the scope of the Agreement and/or persons employed by other railroads at Sheldon, Illinois, TP&W employees; at St. Anne, Illinois, Chicago & Eastern Illinois employees and at Sheff, Indiana, by employees of the New York Central Lines West.
2. The Carrier shall, because of the violations set out above, restore the work to the parties' Agreement and restore the first and second trick operator-clerk positions at Sheldon, Illinois.
3. The Carrier shall, in addition to the foregoing, compensate Mr. John Granrude, the regular first trick operator-clerk, and Mr. E. H. Bigger, the regular second trick operator-clerk at Sheldon, Illinois, in accordance with the provisions contained in Article 10 and all other applicable rules of the Agreement between the parties, for any loss of wages and additional expenses incurred by reason of the Carrier's violative act for each day for as long as such violation continues.
4. The Carrier shall also compensate Mr. R. E. Reed, Mr. D. E. Bottorff and any other telegrapher adversely affected by reason of the improper abolishment of the first and second trick operator-clerk positions at Sheldon, Illinois, under the provisions of Article 10, and any other applicable rules of the Agreement between the parties, for any loss of wages or expense incurred, for as long as the violation continues. The dates and amounts due such employees to be determined by a joint check of the Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: The three claims in this docket arose at Sheldon, Illinois. Before October 20, 1962, the Carrier main-

them was turned over to the employees of other railroads and to other employees of the Carrier outside the craft of Telegraphers.

As clarification, attached is a rough sketch (Carrier's Exhibit No. 1) showing the territory and stations involved in this claim.

(Exhibits not reproduced)

OPINION OF BOARD: This series of claims arose from a series of events whereby Carrier converted station at Sheldon, Illinois from manual to automatic operation and in so doing abolished by steps the first, second and third trick telegraph positions.

Carrier's representative has conceded by letter of August 26, 1963 (Employee's Exhibit 7) that the portion of Claim No. 1 covering loss of wages by Claimant Silvers for the period October 27, 1962 to December 27, 1962 should be paid. This Board concurs.

There is no question that Carrier as a management function has the right to abolish the subject positions. The burden is thus on the Employees to show that in so doing Carrier violated the Agreement as set out in the Claims.

As to the merits of Claims 1, 2 and 3, the record is replete with conflicting allegations and denials concerning work performed by Telegraphers and others before and after automation of the station. These conflicting statements, absent other proof in the record, fail to sustain that the Agreement has been violated.

The Organization has urged in Claim No. 1 that Carrier failed to satisfy the Time Limits on Claims rule of the Agreement because Carrier's representative in letter of May 13, 1963 (Employees' Exhibit 4) gave no reason of his own in declining the claim but endorsed and concurred in the previously issued declination of the Rules Examiner. This argument fails in logic as well as precedent. There is no requirement in practice that succeeding representatives offer different reasons for refusal of claim, only that they notify "in writing of the reasons for such disallowance." Here they were set out to be the reasons given by the Rules Examiner.

It is further argued that Carrier also failed in Claim No. 2 under the Time Limit Rule because of a factual error by the Rules Examiner in stating the elements of the claim declined. The Examiner set out in his refusal letter of March 26, 1963 (Employees' Exhibit 12) that "on December 27, 1962 the first and second trick operator-clerk positions at Sheldon, Illinois was abolished."

In fact, the positions were not abolished until April 7, 1963 when that action became the basis for Claim No. 3 herein. The Examiner's letter, however, referred correctly to Employees' Letter of Claim of February 18, 1963 and was of sufficient particularity in dealing with Claim No. 2 that it was readily and reasonably a refusal of that claim. The Time Limit rule only requires disallowance in writing, not that such letter shall be a "good" letter or that the reasons given shall be "good" reasons.

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 Agreement has been violated only to the extent covered in the Opinion.

A W A R D

Claim No. 1 sustained in part and denied in part in accordance with Opinion.

Claim 2 and Claim 3 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty

Dated at Chicago, Illinois, this 11th day of September 1969.