



Award Number 17828

Docket Number TE-17964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk and Western Railway (Virginian Lines), that:

1. The Carrier violated and continues to violate the Agreement between the parties when on February 15, 1967, and dates subsequent thereto, Monday through Friday, inclusive, it requires and permits an employee not covered thereunder to perform telephone communication work which has previously been performed by telegrapher-clerks and agents.
2. The Carrier shall, because of the violation set out in Item 1 above, compensate the senior idle telegrapher-clerk on the New River Division, with preference to the telegrapher-clerks on rest day, "Q" office, Princeton, West Virginia, as outlined in Item 3 below.
3. This is a continuing claim beginning February 15, 1967 and continuing thereafter until violations are corrected. The compensation shall be one (1) call, three hours' pay at rate of \$3.0269 per hour. Total amount \$9.0807, plus all subsequent general wage adjustments, per day until violations cease to exist. Recipients shall be determined by a joint check of Carrier records.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the collective bargaining Agreement, entered into by the parties hereto, effective date of September 1, 1945, as amended and supplemented, and by this reference is made a part hereof. The claim was handled on the property in the usual manner, including conference, up to and including the highest officer of the Carrier designated to handle claims and grievances, and disallowed. The conference was held on November 28, 1967.

The controversy arose on February 15, 1967 when Carrier assigned the work of mine reports to the switchboard operator, a Clerk's position, at Princeton, West Virginia, work which had been performed in the past by chief dispatcher-car distributor at Princeton, West Virginia.

submission in this case. This agreement was negotiated between the former Virginian Railway Company and the Order of Railroad Telegraphers prior to the merger of the former Virginian Railway and Norfolk and Western Railway on December 1, 1959. In connection with effecting the merger of these two properties an agreement was made by the two involved Carriers with the Railway Labor Executives' Association on June 18, 1959, for the protection of the interests of employes of both Carriers; the Order of Railroad Telegraphers being a party thereto. Section 1(c) of that Agreement reads:

"The Norfolk & Western will take over and assume, subject to the provisions of the said Washington Job Protection Agreement, all contracts, schedules and agreements between the Virginian and the constituent labor organizations of the Railway Labor Executives' Association concerning rates of pay, rules, and working conditions in effect at the time of approval of the said merger, and will be bound by the terms and provisions thereof, subject to the changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if the Norfolk & Western had been a party thereto; provided, however, that the assumption of such agreements shall not prevent the consolidation of facilities and integration of employment forces subject to implementing agreements upon application of the terms of the Washington Job Protection Agreement and this agreement."

It, therefore, follows that the Telegraphers' Schedule of September 1, 1945, and supplements thereto, remain in effect insofar as former Virginian Railway employes are concerned, such as are involved in this dispute. The occupant of the switchboard operator position at Princeton, West Virginia, is on the seniority roster of clerical employes.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim alleges violation of the Telegraphers' agreement, arising from Carrier's requiring and permitting an employe not covered thereunder to perform telephone communication work which has previously been performed by telegrapher-clerks and agents.

The record, although containing more than one hundred pages, has defied our best efforts to ascertain just what is involved. The dispute concerns the handling of various data and reports relating to coal movements. A position of telegrapher-clerk was abolished. The occupant of a telephone switchboard operator position, not covered by the telegraphers' agreement, was required to handle some of the mine reports. The positions of Car Distributor and Chief Dispatcher were combined. The record, however, fails to relate these incidents to the alleged violation in a manner permitting any intelligent consideration. There is no clear indication of what precise work is alleged to have been diverted from the telegraphers' craft, nor what members of that craft have been injured.

Under such circumstances any attempt to render a substantive decision would require conclusions based on conjecture and unsupported allegations of fact. This we are not willing to do.

The Board has announced in a veritable host of awards that the burden of establishing facts and evidence sufficient to support a claim rests with the party asserting such claim. That burden clearly has not been met here. Accordingly, the claim must be dismissed. See Awards 12537, 12560, 13300,

13710, 13716, 13726, 14404, 14413, 14590, 15146, 15542, 15675, 15765 and 16499.

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 should be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.