



Award No. 18920

Docket No. TE-15643

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Northwestern Pacific Railroad, that:

1. The Carrier violated the terms and intent of the Telegraphers' Agreement when acting without conference and agreement, it removed the duties performed by the Agent-Telegrapher at South Fork, California, and transferred said duties to employes not covered by the Telegraphers' Agreement; and when it further, on or about April 16, 1964, abolished the position of Agent-Telegrapher and closed the agency at South Fork, California.

2. The Carrier shall now be required to restore such work as has been transferred from the Agent-Telegrapher at South Fork, California, and shall further be required to restore the position with its previous conditions unchanged.

3. The Carrier shall be required to compensate P. O. Pruitt, who was the regularly assigned employe on this position, an additional eight hours' pay at the rate last in effect on this position for each day that the position was not filled. Such compensation to be in addition to whatever other earnings Mr. Pruitt may have had.

4. In the event P. O. Pruitt should leave the service of the Carrier before the Agent-Telegrapher position at South Fork, California, is restored, then the Carrier shall compensate the senior extra telegrapher in seniority order as long as they shall remain in the service of the Carrier, for eight hours' pay at the pro rata rate of the Agent-Telegrapher position at South Fork for each day this position is not established. Such compensation to be in addition to any other earnings said extra telegrapher may have had.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1945, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

of agency-station or stations under whose jurisdiction the non-agency is placed.

6. Among the agencies which were discontinued during the life of the Current Agreement is the former agency of South Fork referred to in Petitioner's Statement of Claim. The above agency was discontinued pursuant to applicable statutory requirements of the State of California, pursuant to appropriate order from California Public Utilities Commission after hearing following one or more protests during pendency of agency closing notice.

7. Appropriate tariff listing with respect to closing of South Fork Agency has likewise been filed with Interstate Commerce Commission, and Interstate Commerce Commission tariffs specifically show non-agency status of South Fork, this being covered by its "Official List of Open and Prepay Stations."

8. Claim as shown in the "Statement of Claim", quoted hereinabove, involves agency of South Fork, California, that was closed on April 16, 1964. By letter dated August 7, 1964 (Carrier's Exhibit A), Petitioner's General Chairman appealed to Carrier's Vice President and General Manager, claim in behalf of P. O. Pruitt for each date the position of Agent-telegrapher at South Fork, California was not filled and in the event P. O. Pruitt's services are terminated, claim in behalf of the senior extra telegrapher. General Chairman alleges that:

"On or about April 17, 1964, the Carrier unilaterally removed from the Agent-telegrapher at South Fork, California, all the duties performed by that position and transferred the work to employees not covered by the Current Agreement."

By letter dated September 9, 1964 (Carrier's Exhibit B), Carrier's Vice President and General Manager denied the claim, pointing out that:

"It is and has been a well recognized principle that the Carrier is free to abolish agencies and the positions existing at such agencies."

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as a result of Carrier closing the station at South Fork, California and abolishing the Agent-Telegrapher position at said station and unilaterally transferring the duties of said Agent-Telegrapher to employees not covered by the Agreement.

The Organization contends that the duties performed by the Agent-Telegrapher at South Fork were unilaterally transferred by Carrier to clerks in the Eureka Freight Office or said duties are now being done by a yard clerk from Eureka who is to be in the area daily except Saturdays, Sundays and holidays; that this Board has held that a Carrier has the right to abolish any position in an Agreement provided the duties of the position are in fact abolished; that in this case the duties of the position were not abolished, but were transferred to clerical employees at another station; that Carrier has not denied that all work performed at South Fork prior to the closing of the station was performed by employees covered by the Telegraphers' Agreement.

The Brotherhood of Railway and Steamship Clerks, after notice of the pending dispute, advised this Board by letter dated October 18, 1965 from Grand President C. L. Dennis, that neither the Brotherhood of Railway Clerks nor the employees it represents are involved in such a dispute as herein between a Carrier and representatives of another craft concerning the interpretation of its Agreement between the Carrier and the representative of such other craft.

In this instance we have a Scope Rule general in nature, listing positions, and not the work, and this Board has consistently held that the burden is upon the petitioning organization claiming such work to prove that by custom, tradition and past practice on the Carrier's system that such work has been exclusively performed by employees of the petitioning organization.

The Organization has failed to present any competent evidence showing that by custom, tradition and past practice the work in dispute belongs exclusively to Telegraphers.

In Award No. 5 of Special Board of Adjustment No. 553, concerning a similar issue as confronting us in this instant dispute, the Board said:

"The Organization contends that upon abolishment of the agencies the work of the positions remained, and that all of the items of work transferred belonged to the persons covered by the Agreement (Agent-Telegraphers at one-man stations and Telegrapher-Clerks at other stations, as an integral part of the work of such positions). It charges, therefore, that the removal of such work to other stations where it is performed by persons outside the Agreement constituted a violation of the Agreement in each instance.

* * * * *

* * * But the Organization insists that the reason for the transfer is immaterial if the work belongs as it claims to the Telegraphers. With that we would agree. In either case the Organization has the burden of showing that work belonging exclusively to Telegraphers has been assigned to persons outside of the Agreement.

In our judgment the Organization has failed to establish any exclusive right to the work in question. Its only claim to the work is based upon the fact that it was being performed by Telegraphers at the particular stations. This is not sufficient. The words of Referee Carter in Award 4392 are persuasive here:

'The claim of the Telegraphers' Organization to this work arises out of the fact that it formerly belonged to the agent assigned to this one-man station. As such agent, the work was properly assigned to him. No part of the work here in question could be said to belong to a Telegrapher because of the inherent nature of the work. Where, therefore, a competent authority authorized the discontinuing of station positions and a closing of the station, the work herein performed out of which this dispute arises, cannot properly be classified as Telegraphers' work exclusively. Unless it could be so classified, we fail to see any basis by which the

senior furloughed or extra Telegrapher not working could maintain a claim for a wage loss. With all station positions properly abolished and no work remaining belonging to Telegraphers, the only basis for a claim that the work belonged to Telegraphers is gone.'"

For the aforesaid reasons, we must deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.