



SPECIAL BOARD OF ADJUSTMENT NO. 327

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

READING COMPANY

STATEMENT OF
CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Lines (Reading Company), that:

1. Carrier violated the Agreement between the parties when effective September 29, 1958, it declared 'abolished' the positions of Agent-Telegrapher at Mt. Holly Springs, Gettysburg, Pa., when in fact the work of such positions remained and was required to be performed daily thereafter.
2. Carrier violated the Agreement between the parties when commencing September 29, 1958 and continuing thereafter, it merged, combined and consolidated the work, services and duties of the position of Agent-Telegrapher at Mt. Holly Springs, Pa. with the work, services and duties of Agent-Telegrapher at Gettysburg, Pa., and required one agent to divide his time between two stations located 24 miles apart.
3. Carrier shall be required to restore the full time positions at Mt. Holly Springs and Gettysburg to a minimum eight hour daily basis as each existed prior to September 29, 1958.
4. The regularly assigned occupant of Mt. Holly Springs agency, W. R. Wallace and Mr. H. L. Fetter of Gettysburg, who were thus improperly removed from their assigned positions, shall be restored thereto and be compensated in full for all monetary loss resulting from the Carrier's action in removing them from their regular assignment, and also paid for all expenses incurred as well as travel and waiting time while working on other positions.
5. All other employees displaced as a result of violations hereinbefore set out, shall be compensated in the same manner as outlined in paragraph 4.
6. The senior, idle employee, extra in preference, shall be paid one day's pay at the applicable rate at Mt. Holly Springs, and Gettysburg on each day beginning September 29, 1958, and continuing thereafter until such violation is corrected.
7. Joint check of Carrier's records be ordered to ascertain and verify the names and amounts due employees as set forth herein."

FINDINGS: On April 25, 1958 the Carrier wrote to the General Chairman, ORT, that, because of a decrease in the volume of work and the number of transactions handled by station agents and agent-telegraphers, it desired to discuss proposed consolidation or dualization of some of those positions. There were conferences on May 1 and 26 and June 4, 1958 without agreement. On June 6th the Carrier advised the General Chairman that, although he did not concur with the proposal, its position was that the rules of agreement did not prevent the changes proposed and that it would proceed with the program of dualization.

On June 10, 1958 the Organization served notice under Section 6 of the Railway Labor Act, as amended, to add to the agreement the following rule:

"No position in existence on April 1, 1958, will be abolished or discontinued except by agreement between the Carrier and the Organization."

The Carrier took the position that such was not a proper subject for bargaining under the Act and that it was barred by the moratorium provisions of the November 1, 1956 National Agreement.

The National Mediation Board docketed that dispute as Case A-5855 and it has not been resolved.

In September 1958, H. L. Fetter held an assignment as agent-telegrapher at Gettysburg, Pa., Monday through Saturday, 7:30 A.M. to 3:30 P.M. Under the Telegraphers' Agreement effective April 1, 1946, corrected September 1, 1951, that position was a monthly rated two star position. At that station there were two clerical positions, a chief clerk five days, 8:00 A.M. to 5:00 P.M. and a yard clerk seven days, 5:00 P.M. to 2:00 A.M.

At the same time W. R. Wallace held an assignment as agent-telegrapher at Mt. Holly Springs, Pa., Monday through Friday, 8:00 A.M. to 5:00 P.M. with one hour for lunch. Under the Agreement that position was hourly rated. At that station there was one other position of depot hand with the same hours and days of work.

On September 18, 1958 those agent-telegraphers were notified by letter, with copy to the Local Chairman, ORT, that effective September 29, 1958 their positions were abolished and the agencies at Mt. Holly Springs and Gettysburg would be dualized under one agent. At the same time Bulletin No. 59 was published advertising that dual agency for bid. It specified service at Mt. Holly Springs 7:00 A.M. to 10:15 A.M., Monday through Friday, and at Gettysburg 12 Noon to 4:00 P.M., Monday through Friday, and 7:00 A.M. to 4:00 P.M., Saturdays, at the monthly rate of the Gettysburg position plus express commission at Mt. Holly Springs. H. L. Fetter was the successful applicant for such position. Other positions at those agencies remained unchanged.

The Third Division, N.R.A.B., has consistently interpreted agreements like that in effect between these parties, wherein positions have been established by negotiation, to obligate the Carrier, in eliminating or combining positions, to follow the established procedure for modification of the agreement except when such action is due to a substantial disappearance of the work and duties for which the position was created or to a substantial change in the service required since the position was negotiated into the agreement. Awards 388, 434, 496, 556, 1521, 3659, 5384, 5507, 5641, 6451 and 8211.

The Carrier asserts that some if not all of those awards were reversed by Award 6945. However, it does not appeal that such award is inconsistent, because it was there shown that the work and service required at a one man station had declined substantially, the station was closed and a few incidental duties were assigned to an agent at a nearby station. The factual showing there would justify the abolishment of that position under the criteria set forth in the foregoing awards.

It appears that the positions involved here were last considered in negotiations in 1951 because it was at that time that the Gettysburg position was changed from Telegrapher-Clerk to Agent-Telegrapher and converted to a monthly rated instead of an hourly rated position.

There is no evidence here as to the work and duties of the positions or the service required or traffic handled at those stations at that time. There is in evidence some data as to business handled in 1956, 1957, 1958 and 1959, which shows some diminution from 1956 to 1958. However at the time of this action by the Carrier and thereafter other station forces were employed during the agent's former hours of work. It also appears that telegraphers' work was still required to be performed at these stations. Under the ebb and flow of work principle, established by the Third Division, N.R.A.B., the work performed by such other forces is ultimately the agent's work being performed by others to provide assistance to him.

Under such circumstances it cannot be said that the work of the position of agent has disappeared or substantially diminished, so as to justify the elimination or combination of positions by the Carrier in the absence of agreement with the Organization, under the interpretive principles established by the Third Division, N.R.A.B.

As the Third Division has consistently said it will not direct the re-establishment of positions but leave the future resolution of the problem to agreement by the parties or reassignment by the Carrier in accordance with the agreement or subsequent changes. This Board accordingly declines to direct a re-establishment of the positions abolished herein.

Concerning the claims for compensation it appears that the responsibility of the Carrier is to make the affected employees whole for actual wage losses and any directly connected necessary expense, such as room rent and commuting expense at a distant work place. It is not responsible for damages for monetarily unmeasurable results such as changes in rest days, reasonable changes in distance from home to work place or the purchase of a second automobile, because the agreement neither provides for nor contemplates the assessment of such unliquidated items of damage. The determination of actual monetary amounts is held in abeyance at this time, for resolution by the representatives of the parties on this Board.

AWARD: Claim sustained to the extent stated in the findings.

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/s/ Dudley E. Whiting
DUDLEY E. WHITING, REFEREE

/s/ R. J. Woodman
R. J. WOODMAN, Employee Member

/s/ H. F. Wyatt
H. F. WYATT, JR., Carrier Member

Philadelphia, Pa.

October 7, 1960