



CASE NO. 1
ORT 1831

SPECIAL BOARD OF ADJUSTMENT NO. 306

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT
OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

1. The carrier violated the terms of the Agreement between the parties when on January 12, 1955, it
 - (a) Declared abolished the two positions of signal station operator at Framingham Center, Mass.
 - (b) Declared abolished the two positions of operator-clerk at Framingham, Mass.
 - (c) Caused to be displaced the regularly assigned occupants of the operator-clerk positions at Framingham and the regularly assigned occupants of the signal station operator positions at Framingham Center, from their duly assigned assignments;
 - (d) Improperly joined the two positions of signal station operator at Framingham Center with that of the two operator-clerk positions at Framingham Yard and joined these four positions into two positions reclassified as signal station operator, operator-clerk located at Framingham.
 - (e) Required the occupants of the improperly reclassified and improperly established positions of signal station operator, operator-clerk positions at Framingham to daily commute between Framingham and Framingham Center for the purpose of performing dual service at both locations, part time at Framingham and part time at Framingham Center.
2. The positions of signal station operator at Framingham Center and the positions of operator-clerk at Framingham Yard be restored to their original status and P. Amalifitano extra, hold-down signal station operator at Framingham Center, Mass., who was improperly removed from his assignment shall be returned thereto and be compensated in full for all monetary loss suffered as a result of Carrier's action and also be compensated in accordance with the provisions of Article 29 of the Telegraphers' Agreement for each day he was required to work off of his Regular assignment, continuing until restored to their regular assigned positions.
3. The positions of operator-clerk at Framingham Yard shall be restored to their original status and Messrs. E. E. Bowles, T. J. Dominick, regularly assigned occupants and W. H. Walker, Jr., regularly assigned rest day relief operator-clerk at Framingham Yard, Mass., who were improperly removed from their assignments shall be

"restored thereto and compensated for all monetary losses sustained resulting from Carrier's action, and also be compensated in accordance with the provisions of Article 29 of the Telegraphers' Agreement, for each day they are required to work off of their regular assignment continuing until restored to their regular assigned positions.

4. Messrs. S. P. Devine, J. D. MacDonald, K. M. Miller and R. J. Niblack, who were improperly displaced as a result of the declared abolishment of the positions named in this claim, and all others resultantly displaced shall be reimbursed the difference between their earnings on other positions named in this claim, and all others resultantly displaced shall be reimbursed the difference between their earnings on other positions and that which they would have earned on the positions that they were required to vacate, together with the compensation due under Article 29 of the Agreement.

5. For each working day, and for work denied at Framingham Center on the first and second shift, commencing January 13, 1955, until said positions are restored to their original status, the senior extra, or unassigned employees shall be compensated an amount equivalent to one day's pay of 8 hours on a day to day basis for work improperly withheld."

FINDINGS:

Two SS Operator positions at Framingham Center were listed in the Wage Scale of the Agreement effective September 1, 1949 and had existed for many years. Framingham Center is two miles north of Framingham where the Boston and Albany RR crosses the line of this carrier. B and A tower operators always controlled movements at that point until September 1, 1953, when, due to a consolidation of towers, such operators were located at some distance from that crossing and were not available to handle communications and records in connection with movements of this carrier's trains. Two positions of Operator-Clerk were established at that point because of such change.

In January 1955 the Carrier abolished the positions at Framingham and at Framingham Center and bulletined two positions of S.S. Operator; Operator-Clerk at Framingham to work at Framingham Center as required. This claim resulted therefrom.

The employees contend that the carrier has no right to eliminate or combine positions except in accordance with the provisions of Article 35 governing modification of the agreement. They cite Third Division Awards No. 434, 5365, 5507 and 6869. They contend that Award No. 6945, relied on by the carrier, is erroneous.

Correct interpretation of such awards requires the conclusion that Award No. 6945 is not inconsistent. The others enunciate the general rule that to eliminate or combine positions negotiated into the agreement the carrier is obligated to follow the procedures for modification of the agreement, except when due to substantial elimination of the work and duties for which the position was created,

such as was the case in Award No. 6945, and except when due to a change in the service required since the position was negotiated into the agreement. The employees have ignored such exceptions in their interpretation of applicable awards.

The factual situation here differs from that in Award No. 6945. Here there is no evidence of any change in the work or duties of the Framingham Center positions nor of the service required there since September 1, 1949, the effective date of the last agreement providing for such positions, nor of any such change in connection with the positions at either point subsequent to September 1, 1953, when the Framingham positions were established.

The carrier contends that the Framingham positions were established unilaterally and could be so abolished. Obviously the carrier made a unilateral decision as to the need for such positions, but it appears that the organization was consulted and an agreeable rate established. Those positions thereby became an integral part of the wage scale, and just as much negotiated positions as those printed in the 1949 wage scale. Moreover, it is noted, that the net result of carrier's action was to eliminate the Framingham Center positions, which were included in the printed list of the 1949 agreement.

On the evidence submitted such elimination was not within the established exceptions to the general rule, so it appears that the action of the carrier was a violation of the agreement.

The Third Division has consistently held in such cases that it would not direct the reestablishment of positions but would leave the matter to agreement by the parties or to permit the carrier to reassign the work in conformity with the agreement or to act in accordance with subsequent changes. Thus the portion of the claim seeking reestablishment of the positions and reassignment thereto must be denied.

It does not appear that Article 29 is applicable to this situation, so only the portion of the claim seeking compensation for the loss of earnings of employees displaced by carrier's action is sustainable.

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

SPECIAL BOARD OF ADJUSTMENT NO. 306

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

/s/ Russell J. Woodman
RUSSELL J. WOODMAN, Employee Member

/s/ J. J. Gaherin
J. J. GAHERIN, Carrier Member

DATED: October 7, 1960.