

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad:

1. That Carrier violated the Agreement, between the parties hereto, when on the 19th day of September 1951, it declared the position of Agent, Hassell, North Carolina, to be abolished when in fact the work of such position remained to be performed.

2. That Carrier further violated the Agreement, when commencing on the 19th day of September 1951, it required the Agent, Oak City, North Carolina, to make daily automobile trips to Hassell, North Carolina, to perform the duties and render services, theretofore performed by the Agent, Hassell, North Carolina, a separate and distinct position.

3. That Carrier shall, as a result of the violation aforesaid, resulting in displacement of E. L. Bradley, Agent, Hassell, North Carolina, be required to compensate the said E. L. Bradley, for all loss of wages and expenses incurred, as a result of his wrongful suspension from regularly assigned position, as Agent, Hassell, North Carolina.

4. That Carrier shall be required to pay the Agent, Oak City, North Carolina, one day's pay, for each and every day he has been in violation of the Agreement, required to perform the duties and services of the Agent, Hassell, North Carolina, in addition to his regularly assigned duties as Agent, Oak City, North Carolina, and also reasonable amount for wrongfully requiring the said Agent, Oak City, North Carolina, to use his automobile in making a round-trip daily to Hassell, North Carolina.

5. That all other employes, adversely affected by Carrier's violative actions, shown in paragraphs 1 and 2, shall be fully compensated for all loss of wages and for any expenses incurred as a result thereof.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect, an Agreement bearing an effective date of November 1, 1939, between the Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier

Data in support of the Carrier's position have been presented to the Employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The town of Hassell, North Carolina, is on a branch line of this Carrier and has a population of 137 persons. Approximately five miles north of Hassell is the Oak City agency. The only train service on this Kinston branch is one local freight, daily except Sunday. Passenger service has long since been discontinued. The volume of shipments into and out of Hassell is quite small, as evidenced by the record. All of which we have taken cognizance of.

In 1950 the Carrier made application to the North Carolina Utilities Commission for authority to discontinue all agency service at Hassell. A public hearing was held on December 8, 1950, and the Commission rendered its Order on September 7, 1951, finding in substance as follows: That to require the railroad applicant to maintain the regular agency service now maintained at Hassell imposes an undue burden on the railroad; partial agency service at Hassell will reasonably provide for the convenience and needs of the public; that the offer made by the railroad company to permit its agent at Oak City to be at Hassell from 11:00 A. M. to 12:00 Noon from Monday through Friday each week and, if business should require more than an hour of said Agent's time, that suitable arrangements would be made for him to remain as long as would be required to provide for the convenience and needs of the public; that the disparity between this and the burden now imposed on the railroad would be equitably adjusted. This is the important part of the Order. It is, therefore, ordered that the applicant railroad set about to provide the service suggested by its General Superintendent, which in substance is permitting the agent at Oak City to be at Hassell from 11:00 A. M. to 12:00 Noon Monday through Friday each week to handle any business offered at that point; and, if the business at Hassell should require more than an hour of the agent's time, suitable arrangements be made for that agent to remain as long as necessary.

After this Order was rendered, the Carrier abolished the agent's position at Hassell and arranged for the agent at Oak City to provide partial service which was required. This occurred on September 19, 1951.

The Petitioner takes the position that the Carrier was not within its rights to abolish this position where one hour of work remained at Hassell and to assign this work to the agent at Oak City; that the Carrier is not privileged to consolidate or combine these two positions, except by negotiation under Article 21, page 17, of the Agreement between the Carrier and its employes, effective November 1, 1939. The Carrier takes the position that the decline in traffic at Hassell justified the abolition of this position and that this was affirmed by the North Carolina Utilities Commission. We might state at the outset that, while the Carrier obtained permission from the North Carolina Utilities Commission, this did in no manner give the Carrier authority to violate any of the rules of the parties' Agreement. (See Awards 3738 and 5375.)

The Petitioner has cited numerous awards of this Division which, in effect, hold as follows: Where an agreement lists positions, together with rates of pay attached to these positions, and provides the rates of pay shall continue until changed by certain procedure, we are of the opinion that it is as much a violation of the agreement to abolish the position where the work remains and assign the work to someone else without following specified procedure as it would be to change the rates of pay in an unauthorized manner. (Award 1296. See also Awards 137, 422, 456, 735, 1235 cited in Award 3686.)

In numerous awards this Board has held that a carrier has the absolute right to abolish any position in the agreement provided the duties are in fact abolished. (Award 3738.) It is well settled that the carriers have the right

to abolish positions included in the agreement when there is no longer work to be performed in these positions. Such work is subject to the agreement and must be performed by the class of employes to which the agreement applies. (Award 3734. See also Awards 4576 and 5365.) As we review the record, the work at Hassell had declined to a substantial degree, leaving only a small volume of business at that station. Due to this fact, the Carrier was compelled, in its opinion, to take the action as heretofore indicated and abolish the position in question at Hassell. In doing so it assigned an hour or so work to the agent at Oak City, a position in the same craft, under the same Telegraphers' Agreement and in the same seniority district. We cannot find that the Carrier has violated any of the rules under the Agreement. Under the circumstances as presented by the record, the following is deemed to be pertinent and determinative of this claim: As said in Award 5719, which involved a station at Alda, Nebraska, when the Nebraska State Railway Commission granted the carrier the right to discontinue the station: "This Division has rendered a substantial number of Awards dealing with Carrier actions in discontinuing such positions as the one at Alda. These Awards have generally recognized the right of the Carrier to discontinue a position where the work of that position declines to the point where a substantial part of the employe's time is not occupied with the duties of the position. Awards 439, 4759, 4385, 5127, 5283, 5318." In the instant case there was such decline of duties at Hassell. (See also Award 5999.)

As stated in Award 6022, there are two principles so well established there is no occasion for citing awards supporting them that must be given consideration in determining the rights of the parties under the confronting facts as we have construed them. The first is that except in so far as it has restricted itself by the agreement the assignment of work necessary for its operation lies within the carrier's discretion. The second is that in the absence of any rules of the agreement precluding it from doing so it is the prerogative of management, so long as it actually intends to accomplish such a result, to abolish a position if a substantial part of the work thereof has disappeared. (See also Award 6839 and awards cited therein.)

The carrier may in the interests of efficiency and economy of its operations abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of the collective agreement. However, when doing so the work of the positions abolished must be assigned to and performed by the class of employes entitled thereto under the agreement.

From an analysis of the record, the authorities herein cited and the reasons stated herein, we conclude the claim should be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.