

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement, as amended, including the March 4, 1980 Agreement and the Implementing Agreement signed September 11, 1980 with an effective date of August 15, 1980, the Chicago and North Western Transportation Company violated provisions of said agreements when on December 28, 1981 said Carrier abolished job #001 which was a former Rock Island Railroad position thus depriving Lineman G. A. Strobel his contractual rights to job position #001.

2. Therefore, accordingly, the Chicago and North Western Transportation Company be ordered to re-establish job position #001 and compensate Lineman G. A. Strobel the difference in his salary commencing January 1, 1982 until the date the Chicago and North Western Transportation Company again establishes job position #001 and awards job position #001 to Lineman G. A. Strobel.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On or about April 1, 1980, Carrier acquired certain Lines which were previously owned by the bankrupt Chicago, Rock Island and Pacific Railroad (hereinafter "Rock Island").

On March 4, 1980, Carrier became a party to a Labor Protective Agreement with the Railway Labor Executives' Association providing for the orderly transfer of former Rock Island employees to the acquiring railroads, one of whom was Carrier.

On December 19, 1980, Lineman R. E. Bean, a former Rock Island employee, retired. Rather than bulletining the vacancy, however, Carrier chose to abolish the Position, No. 001, and redistributed Mr. Bean's duties by increasing the territory of four (4) other Lineman Electricians.

On January 7, 1982, Organization filed a Claim in protest of Carrier's abolishment of Position No. 001. In its argumentation Organization contends that former Rock Island employees (i.e. Claimant) enjoy a prior right to perform Lineman's work on the former Rock Island property. Consequently, by abolishing Position No. 001, a former Rock Island Lineman's position, and redistributing Claimant's territory to Chicago and North Western employees, Carrier violated Article II, Section 9 of the March 4, 1980 Protective Agreement as implemented by Article II, Section I of the parties' September 11, 1980 Implementing Agreement. Said provisions, in pertinent part, read as follows:

"MEMORANDUM OF AGREEMENT
BETWEEN
THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
and
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
IMPLEMENTING
ARTICLE II, SECTION 9 OF THE MARCH , 1980 AGREEMENT
* * *

Article II - Seniority

Section I - Positions Established

- (a) As a result of Service Order No. 1462 of the Interstate Commerce Commission which authorized the C&NWT to become an interim service operator on various lines of the CRI&P, on or about April 1, 1980 the C&NWT established additional positions, at the following locations, and some time thereafter hired employees of the CRI&P under the terms of the March 4, 1980 Agreement. As of the date of this Agreement CRI&P employees identified below have been so hired and are occupying such positions as follows:

<u>Position No.</u>	<u>Title</u>	<u>Location</u>	<u>Employee Presently Occupying Pos.</u>	<u>CRI&P Sen. Date</u>
001	Lineman Elec.	Iowa Falls	R. E. Bean	1-12-51
002	Lineman Elec.	Trenton	D. L. Murphy	6-21-55
003	Const. Lnmn.	Iowa Falls	G. A. Strobel	4-17-62
		* * *		
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LABOR PROTECTIVE AGREEMENT
between
RAILROADS PARTIES HERETO
INVOLVED IN MIDWEST RAIL
RESTRUCTURING
and
EMPLOYEES OF SUCH RAILROADS
REPRESENTED BY THE RAIL
LABOR ORGANIZATION
operating through the
RAILWAY LABOR EXECUTIVES ASSOCIATION
* * *

Article II. Hiring and Work Rules
* * *

9. Implementing Agreement--

(a) ... Where no additional jobs are established,
the purchasing carrier's present employees' jobs
may be expanded to include work on or in connec-
tion with the acquired property...."

* * *
* * * * *

Specifically, Organization reads Article II, Section I(a) of the September 11, 1980 Implementing Agreement as the source of prior rights once Carrier established the Positions involved in the instant dispute. According to Organization, once the Lineman Positions were established by the Implementing Agreement, they became protected by paragraph 9 of the March 4, 1980 Protective Agreement and could not be commingled with the positions of a purchasing Carrier's employees.

Pursuant to addressing the merits portion of this Claim, Carrier initially argues that the Second Division's jurisdiction is limited to interpreting Collective Bargaining Agreements and may not consider claims involving violations of statute, governmental regulations or orders (First Division Award No. 8832). According to Carrier, since the instant Claim, as presented on the property, also claimed violation of an order of the Interstate Commerce Commission and the September 25, 1964 National Agreement with the shop craft organizations, which contained a Special Board of Adjustment for specific disputes, then our Board does not have jurisdiction in the instant case.

Turning to the merits portion of this case, Carrier argues that it acted properly in abolishing the Iowa Falls Lineman's position and redistributing or commingling the retired Lineman's duties among Carrier's current employees. As support for its position, Carrier cites Article II, paragraph 8(c) of the parties' March 4, 1980 Protective Agreement which states as follows:

"Article II. Hiring and Work Rules

* * *

8. Application of Work Rules.

* * *

- (c) the purchasing carrier shall have the option:
- (1) to commingle, under the purchasing carrier's work rules, work in connection with lines acquired from the Rock Island and/or the Milwaukee with work in its existing seniority districts, including expansion of those seniority districts to encompass the acquired lines; and where there are agreed-upon switching limits for yards at a common point, switching limits of the purchasing carrier will be extended to include the switching limits of acquired property; or
 - (2) to operate the acquired property as a separate seniority district or districts under the purchasing carrier's work rules."

* * *

* * * * *

In light of the foregoing, Carrier contends that it commingled all former Rock Island work with that of Chicago and North Western employees. It is Carrier's position, therefore, that all present Chicago and Northwestern Lineman Electricians have systemwide seniority which includes the former Rock Island lines. Moreover, according to Carrier, after reviewing both the Protective and Implementing Agreements, Carrier cannot find but one (1) inapplicable provision (Article II, Section 1(b) of the Implementing Agreement) giving preference to former Rock Island employees in the assignment of work. Lastly, Carrier further argues that the abolishment of Position No. 001 and the transfer of its attendant duties was effectuated in accordance with Rule 25 of the parties' controlling Agreement which reads as follows:

"When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per Rule 28 to govern; the men affected to take the rate of the job on which they have placed themselves.

Men affected under this rule will be given five days' notice and lists will be furnished local committee."

Regarding Carrier's procedural objection in this case, there are at least three (3) reasons which support the finding that this Board is within its jurisdiction as granted by the Railway Labor Act to hear and decide this controversy. These are: (1) the Board is clearly being called upon in the instant case to interpret a Collective Bargaining Agreement which was properly

executed by the parties; (2) in labor relations, in situations wherein there is a multiplicity of forums by which to adjudicate a dispute, the choice of one particular method of adjudication does not necessarily preclude the utilization of another method; and (3) Carrier's raising of this objection, apparently for the very first time in its Submission, is considered to be untimely and, therefore, improper. For these reasons, the Board concludes that the matter is properly before us for determination.

Despite the foregoing procedural determination, the Board is persuaded that the merits portion of this controversy must be resolved in favor of Carrier's position as presented hereinabove. After reading both the Protective Agreement and the Implementing Agreement, we are unable to find any specific or implied provision(s) establishing the right of former Rock Island Lineman to service the lines of the defunct railroad. A close reading of both Agreements indicates that at the time of the effectuation thereof, the parties attempted to wind-up the business of the Rock Island Railroad and to give a fresh start to the bankrupt Carrier's employees. To this end, both Agreements speak of "terminating" rights rather than "preserving" rights with the Rock Island. Moreover, the overall tenor of the Implementing Agreement speaks to the consolidation of forces of the acquired and acquiring Lines. Organization's position in the instant appears to require the continuation, in perpetuity, of rights which existed in a prior Agreement.

Article II, Section 9 of the Protective Agreement, which is interpreted by Organization as limiting Carrier's power to commingle the work of the acquired railroad employees, appears to be read out of context. Said Article addresses the interval between the March 4, 1980 Protective Agreement and any subsequent Implementing Agreement with an acquiring railroad. In the interim, however, in order to avoid delay and to facilitate the procedure, the parties granted an acquiring railroad flexibility to accomplish the pending merger. One of the expedited powers in this regard was permission to expand the work of Carrier's present forces if Carrier chose not to establish any new positions. Hence, this provision was not intended to limit Carrier's commingling rights as specified in Article II, Section (c) of the Protective Agreement; and the language of Article II, Section 9 of that same Agreement does not limit any other provision thereof. Moreover, even if the language of Article II, Section 9 did limit Carrier's ability to commingle work, that Section became null and void when Carrier and Organization executed the September 11, 1980 Implementing Agreement.

Given that neither the March 4, 1980 Protective Agreement nor its companion Implementing Agreement limited Carrier's action in the instant controversy, the only remaining possible source of restriction on Management's discretion in such matters was embodied in the parties' controlling Agreement on the property. The Board's reading of the record leads us to conclude, however, that Carrier's action herein was in compliance with Rule 25 of the controlling Agreement when abolishing the Iowa Falls Lineman's position and assigning the remaining duties to Linemen other than Claimant.

Form 1
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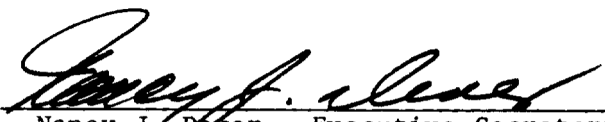
Award No. 11244
Docket No. 10192
2-C&NW-'EW-'87

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.