Award No. 3616

Docket No. 3495

2-SLSF-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the provisions of the current agreement were violated and Division Lineman Clarence Robbertson was unjustly treated when the assigned territory of his position was increased and a Communications Maintainer was assigned to perform the work of his assigned position on the Springfield Terminal territory.

That accordingly the Carrier be ordered to—

1. Re-establish the assigned territory of Division Lineman Robbertson as the Springfield Terminal, and

2. Discontinue the assignment of a Communications Maintainer to perform the work formerly performed by Division Lineman Robbertson on the Springfield Terminal territory.

EMPLOYES' STATEMENT OF FACTS: Each division lineman employed in the Telephone and Telegraph Department of the St. Louis-San Francisco Railroad, hereinafter referred to as the carrier, has acquired an assignment by bid. Such assignments are for a definite territory and a designated headquarters within that territory. Such information is included in the bulletin when the new position or vacancy is advertised for bid.

Clarence Robbertson, hereinafter referred to as the claimant, is employed by the carrier as a division lineman and was assigned to a territory which embraced the Springfield Terminal, with headquarters at Springfield, Mo.

On April 25, 1958, the claimant was notified by letter that the territory embraced in his assignment was increased to include an additional 185 miles of pole lines. This included the lines from Springfield, Mo. to the cable pole at Monett, Mo., and the lines from Springfield, Mo., to Centropolis, Mo. This change was effective May 1, 1958.

Classification of Work Rule 2, as it appears in the printed agreement, came into being by virtue of an agreement entered into September 1, 1953, amending the basic agreement of November 6, 1950. The effective date of Appendix Item 1 coincides with the September 1, 1953 effective date of the amendment to the basic agreement.

Sometime prior to September 1, 1953, the carrier had begun to install two-way radio communication systems in its principal train yards and on yard engines at locations such as Springfield, St. Louis, Kansas City, Memphis, Birmingham and Tulsa, and such installations created a need for employes to repair, maintain and service the radio equipment. The employe classification of communications maintainer first appeared in the September 1, 1953 amendment to the basic agreement.

According to Rule 2 (c), a communications maintainer is:

> "An employe qualified and assigned as communications maintainer to maintain, assemble, dismantle, inspect, adjust, test, repair and install all types of communication equipment, appurtenances and associated wiring, including communication radio, with or without specifications or drawings."

The new classification of communications maintainer was also responsible for the parties entering into Appendix Item 1. These were new positions on the carrier and the organization was apprehensive of the effect those positions might have upon other employes in the communications department who were ineligible for the positions because they were unqualified for radio work.

The organization's representatives were especially concerned about the effect the new positions might have upon division linemen. This is evidenced by certain restrictive clauses in Appendix Item 1, such as paragraph 1 thereof, relating to pole line work and paragraph 3 thereof protecting the division lineman at Springfield from displacement by a communications maintainer so long as he remains on that position.

The organization will undoubtedly contend here, as on the property, that an extension of the claimant's territory operated to displace him as division lineman, but it simply cannot be successfully argued that an employe displaced and deprived of employment or required to exercise seniority displacement rights on a less remunerative position is equivalent to continuing in employment on the same position, at the same location and at the same rate of pay.

There is no prohibition in Appendix Item 1 or elsewhere in the agreement against the carrier expanding or contracting a division lineman's territory to fit its service requirements. The carrier has not relinquished that fundamental right.

Appendix Item 1 and the basic agreement rules applied to the particular factual situation do not merit a sustaining award and this Division is requested to so find.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 were given due notice of hearing thereon.

By agreement of August 25, 1953 a new classification of "Communications Maintainer" was included in the classification of linemen's work set out in Rule 2, without restriction as to its performance of any type of communications work set out in the rule, hence including the work performed both by Equipment Repairmen and Division Linemen.

It was provided in paragraph numbered 3 of the agreement that:

> "It is understood this agreement will not operate to displace the employe assigned as Division Lineman in Springfield Terminal so long as he remains the regularly assigned incumbent of such position. If at any time he vacates the position, then communications Maintainer may be assigned in accordance with Section 1 of this agreement."

Under date of May 5, 1955 further agreement was made as to the establishing of Communications Maintainer on an hourly basis, but in negotiating that agreement carrier agreed by letter of May 2, 1955 that:

> "It is understood that replacement of equipment installer or equipment repairman positions with positions of other classifications will be subject to negotiation."

C. E. Robertson, claimant in Docket No. 3495, was the employe assigned as Division Lineman in Springfield Terminal, and claims under the above quoted paragraph numbered 3. Clarence Maneke, claimant in Docket No. 3481, was a regularly assigned Equipment Repairman in Springfield and relies on the letter agreement above set out.

Effective May 1, 1958, carrier abolished the position of Division Lineman, with territory adjoining Springfield Terminal, and notified claimant Robertson that the territory of his position was being increased to include the territory of the abolished position. On the same date Claimant Maneke's position was abolished. Then a new Communications Maintainer position was established on an hourly basis at the Springfield Terminal and the employe assigned to that position was used thereafter to perform virtually all the work in Springfield Terminal formerly performed by both Robertson and Maneke.

Thus by indirection Claimant Robertson was displaced from his position of Division Lineman with territory "Springfield Terminal" of which he was the regularly assigned incumbent and was transferred to other territory which previously constituted a separate assignment, and since he had not vacated the position a Communications Maintainer position could not be there assigned under the provisions of paragraph 3, above quoted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1960.

CARRIER MEMBERS' DISSENT TO AWARDS NO. 3615 AND 3616

On or about May 1, 1958, the Carrier abolished the position of Division Lineman, with territory adjoining Springfield Terminal, and extended the territory of claimant Division Lineman Robertson. On or about the same date, the Carrier abolished claimant Equipment Repairman Maneke's position, whose duties were principally confined to Springfield Terminal, and also established a new position of Communications Maintainer on an hourly rate basis in Springfield Terminal.

The last sentence in the penultimate paragraph of the Findings in both Awards reads as follows:

> "Then a new Communications Maintainer position was established on an hourly basis at Springfield Terminal and the employe assigned to that position was used thereafter to **perform virtually all the work in Springfield Terminal** formerly performed by both Robertson and Maneke." (Emphasis ours.)

When the majority holds that an employe on a Communications Maintainer position on a five-day, forty-hour work week assignment can absorb "virtually all the work in Springfield Terminal" formerly performed by two monthly rated employes whose monthly rates of pay comprehend 211 hours, such holding hardly finds in our estimation substantial support in the record. Notwithstanding, however, the majority nevertheless proceeds to direct the Carrier as to how it shall conduct its operations when they direct the Carrier by sustaining awards to reestablish the Equipment Repairman position at Springfield and to reestablish the assigned territory of the claimant Division Lineman at Springfield, Missouri—all contrary to the Carrier's unrestricted prerogative to make the changes mentioned in the opening paragraph.

In Award No. 2357, this Division said in part:

> "We have no authority to direct a carrier as to how it shall conduct its operations."

and in Award No. 3453, this Division again said in part:

> "The claim in two parts; (a) asks that the carrier be required to 'Cease and desist . . .' This Board lacks authority to direct a carrier as to how it shall conduct its operation . . ."

We dissent.

M. E. Somerlott

H. K. Hagerman

D. H. Hicks

P. R. Humphreys, Carrier Members.