Award No. 4427
Docket No. 4362
2-PULL-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That at San Antonio, Texas the Pullman Company violated the current agreement when they abolished position number 65 with regular bulletined hours of 7:30 A. M. to 11:30 A. M. and 12:00 noon to 4:00 P. M. on Tuesday, Wednesday, Thursday, Friday and Saturday with Sunday and Monday as relief days, which position was held by electrician G. D. Harding: and position number 66 with regular bulletined hours of 7:30 A. M. to 11:30 A. M. and 12:00 noon to 4:00 P. M. on Friday, Saturday, Sunday, Monday and Tuesday, with Wednesday and Thursday as relief days, which position was held by electrician A. B. Hamill: and then established position MP 67 to perform the same duties of these two positions with hours of 8:30 A. M. to 11:30 A. M. and 12:00 noon to 3:00 P. M. seven days per week with no relief days.

2. That the positions number 65 and 66 be reestablished.

3. That G. D. Harding be compensated at the pro rata rate for all time that he is prevented from working the hours of 7:30 A. M. to 11:30 A. M. and 12:00 noon to 4:00 P. M. on each Tuesday, Wednesday, Thursday, Friday and Saturday; and at the time and one-half rate of pay for all services performed outside of these hours and on his relief days Sunday and Monday from January 11, 1962 until this violation is discontinued.

4. That A. B. Hamill be compensated at the pro rata rate for the time that he is prevented from working the hours of 7:30 A. M. to 11:30 A. M. and 12:00 noon to 4:00 P. M. on each Friday, Saturday, Sunday, Monday, Tuesday from January 11, 1962 until this violation is discontinued.

EMPLOYES' STATEMENT OF FACTS: At the San Antonio Agency November, 1958 the Pullman Company in accord with rule 21 established two electrical positions with eight hours per day, five days per week, i.e., forty hours per week to perform inspections and repairs on Pullman cars operating in and out of San Antonio, Texas. These two positions were held by electricians G. D. Harding and A. B. Hamill and continued in effect until they

The claim in this dispute is illogical in that it concedes under point 1 that one electrician is performing the same duties as formerly were performed by two electricians. Point 2 of the claim requests that the two electricians' positions be re-established. Finally, the claim in points 3 and 4 requests adjustment in behalf of the two electricians in the same manner as they would be paid if two electricians were required in the San Antonio agency. Thus, the claim completely ignores the realities of the situation as to whether one or two electricians are required to perform the necessary work at the point. Also it presumes that it properly may require management to re-establish two positions which management has determined are not required in view of decline in business at the point. The facts fully support management's position that service requirements in San Antonio warranted the establishment of position MP-67 on January 11, 1962.

The company further contends the organization has failed in its obligation to establish facts sufficient to require the allowance of this claim. In this connection, the Board stated in Third Division Award 7362 (Larkin), under **OPINION OF BOARD**, as follows:

> "The burden of establishing facts sufficient to require the allowance of a claim (and proper language in the agreement covering the situations), is upon those who seek the allowances . . ."

See, also, Third Division Awards 5976, 7350 and 9788.

CONCLUSION

In this submission, the company has shown that the claim in behalf of Electricians Harding and Hamill is improperly before the Board and should be summarily dismissed. Also the company has shown that it complied with the provisions of the agreement, with particular reference to rule 21, in setting up the position in question in the San Antonio agency. Finally, the company has shown that Awards of the National Railroad Adjustment Board support the company in this dispute.

The claim is without merit and should be denied.

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.

Positions MP 65 and MP 66 were established in November 1958 and occupied respectively by the Claimants—Electricians G. D. Harding and A. B. Hamill—at the Carrier's Agency at San Antonio, Texas.

These were 8 hours a day—5 days a week positions with the following work schedule:

MP 65 7:30 to 11:30 A. M.—12:00 noon to 4:00 P. M. Tuesday through Saturday.

MP 66 7:30 to 11:30 A. M.—12:00 noon to 4:00 P. M. Friday through Tuesday.

On June 17, 1960, the Carrier abolished the above positions and established one position—MP 67—with the following work schedule:

8:30 to 11:30 A. M.—12:00 noon to 3:00 P. M.—Seven days a week.

Following the Organization's charge of a violation of Rule 21, the Carrier reestablished the two positions (MP 65 and MP 66) on July 7, 1960, and paid Mr. Harding for 32 hours at straight time ($82.82) in settlement of his claim. Mr. Hamill was either on vacation or working at Houston, Texas, from June 16, 1960 to July 7, 1960 and, therefore, he received no compensation as he suffered no loss of earnings.

The Claimants' positions again were discontinued—with the close of business January 10, 1962,—when the Carrier again established a single, six hours a day, seven days a week position at its San Antonio Agency.

On January 31, 1962, Claimant Harding, filed a claim of protest against the Carrier's action. His claim was denied on February 18, 1962.

On February 21, 1962, the Claimant withdrew his claim and on February 23, 1962 the Organization filed a claim on behalf of the Claimants—which claim has been progressed to this Board.

The Organization's position is that:

1) The claim submitted on January 31, 1962, was withdrawn because it "was very brief";

2) The second claim, dated February 23, 1962, which the Committee submitted in place of the first claim, went "into detail regarding the violation";

3) contractual provisions do not bar Organization's actions—as set forth in items 1 and 2 above;

4) San Antonio is an Agency and not a one-man point, therefore, paragraph (a) of Rule 21 is herein the applicable portion of the rule and not the Exception to paragraph (a) as the Carrier contends;

5) Rule 2, of the pertinent agreement, which in part, provides that outlying points or stations must "be mutually agreed upon," supports the Organization's position, namely, "that points as listed in this Agreement was (sic) not intended to to be a district or an agency";

6) also when the Carrier first abolished the present Claimants' jobs in 1960—and established one six hours a day, seven days a week job—it (Carrier) recognized the Organization's protest by reestablishing the two positions and by properly compensating the Claimant who suffered a loss of earnings;

7) the present claim is identical to the 1960 claim and it is, therefore, obvious that the Carrier again violated Rule 21.

The Carrier's position is that:

1) after the Carrier denied the first claim on February 18, 1962, the Claimant withdrew his claim on February 21, 1962, and the Organization then filed a second claim on February 23, 1962, on the same alleged violation, therefore, the present "claim is improperly before the Second Division and should be dismissed";

2) The second claim added only "the names of the two claimants and a request for monetary adjustment", otherwise it "is the same claim in substance and in fact" as the first claim;

3) the "Organization is here attempting to escape such denial by the Company" * * * "by the resubmission of the identical claim which it now has progressed to the Second Division for adjudication";

4) the 1960 case is different from the present one because it was "obvious that there was an increase in business which justified the re-establishment of the two 8-hour daily positions, effective July 7, 1960";

5) in the present case—because of the substantial decline in traffic—"the service of an electrician is not regularly required for a full 8 hours daily in San Antonio";

6) "The claim is illogical in that it concedes under point 1 that one electrician is performing the same duties as formerly were performed by two electricians" and yet the Organization "requests that two electricians' positions be re-established";

7) one-man points "as used in Rule 21 has reference to districts, agencies and outlying points where only one electrician is employed";

8) the Carrier's action did not violate Rule 21 but was strictly in keeping with the exception to Rule 21 (a).

The pertinent parts of the Rules cited by the Parties are as follows:

Rule 1. "NOTE: Wherever the term 'district' appears in this Agreement it is understood to include districts, agencies and the mechanic shop Chicago."

Rule 2. "At stations or outlying points (to be mutually agreed upon) where there is not sufficient work to occupy the full time of an electrician he may be assigned to and will perform other duties to the best of his ability."

Rule 21

"Hours of Service. (a) For Electrical Workers in Districts and Agencies. The bulletined hours of service for employes in districts and agencies shall be eight consecutive hours per day * * * , 5 days per week; i.e., 40 hours per week, subject to the following exception:

"Exception: At one-man points where the service of an employe is not regularly required for a full 8 hours daily, scheduled work shall be established to conform to the requirements of the service. * * * This exception shall not apply where it is possible to arrange the force to conform to an 8-hour day."

We have studied and evaluated the entire record as well as the pertinent rules in this case. The arguments and facts advanced by the Parties in support of their positions—do not require individual analysis and disposition, because they—in many instances—tend to overlap. Accordingly, we will deal solely with the principal points involved in this dispute.

First, there is no doubt that San Antonio is an Agency, because the Carrier has so stated in the record. Furthermore, our reading of the pertinent rules leads us to the conclusion that a one-man point is not an Agency or District. To hold otherwise—would mean that the Exception to Rule 21(a) is meaningless and unnecessary and we do not believe it is.

Second, we can find no provision or rule that would bar the Organization from withdrawing one claim, even after it had been denied, and substituting a more specific and exacting claim in its place.

Third, it cannot be disputed that the Carrier has the right to abolish jobs when diminishing work loads justify such action. It is true, in this dispute, that the electricians' work load at the San Antonio Agency had been greatly reduced. However, the Board is convinced that, because San Antonio is an Agency and not a one-man point, that the Carrier must be governed by Rule 21(a)—which pertains to Districts and Agencies—and not by the Exception to Rule 21(a)—which pertains to one-man points.

Consequently, when the Carrier established position MP 67 at the San Antonio Agency, it was compelled to do so on an 8 consecutive hours a day, 5 days a week basis. Inasmuch as the Carrier failed to do so, it violated the controlling Agreement.

Accordingly, the Board rules that at the Carrier's San Antonio Agency an electrician or electricians may only be employed 8 consecutive hours per day, 5 days per week. It is, therefore, mandatory that the Carrier compensate Claimant Harding in accordance with the demands set forth in Part 3 of Organization's claim.

AWARD

Claim sustained in keeping with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.

CARRIER MEMBERS' DISSENT TO AWARD NO. 4427—PULL-EW

Rule 1, Scope, reads as follows:

"It is understood that this Agreement shall apply to electrical

workers who perform the work specified in this Agreement in the repair shops, mechanic shop Chicago, districts and agencies of The Pullman Company in the United States and in Canada wherein the work covered by this Agreement is performed.

NOTE: Wherever the term "district" appears in this Agreement it is understood to include districts, agencies and the mechanic shop Chicago."

from which it will be seen there are four general categories covered, i.e.—

(a) repair shops
(b) mechanic shop Chicago
(c) districts, and
(d) agencies

From the "NOTE" to Rule 1 it will be seen that wherever the term "District" appears throughout the Agreement—that term also includes agencies and the mechanic shop Chicago.

This is just elementary understanding of the English language.

Rule 21 (a) and the Exception thereto, reads:

"Hours of Service. (a) For Electrical Workers in Districts and Agencies. The bulletined hours of service for employes in districts and agencies shall be 8 consecutive hours per day, exclusive of lunch period (except where lunch period is paid for), 5 days per week; i.e., 40 hours per week, subject to the following exception:

Exception: At one-man points where the service of an employe is not regularly required for a full 8 hours daily, scheduled work periods shall be established and bulletined to conform to the requirements of the service. Employes at such points shall be paid at the straight time rate for service performed during regular bulletined hours on week days, and at overtime rate for service performed in excess thereof. This exception shall not apply where it is possible to arrange the force to conform to an 8-hour day.

Here again an elementary understanding of the English language would indicate what the bulletined Hours of Service, etc., are for electrical workers working for The Pullman Company in Districts and Agencies, EXCEPT when a district or agency becomes a one-man point.

It is obvious that the Referee through a disregard of the plain and unambiguous language of the exception to Rule 21 (a) takes the position that, while San Antonio is an agency, an agency or district cannot become a one-man point.

Rule 1, of course, does not specify one-man points, only agencies, districts, repair shops and mechanic shop Chicago are listed as being covered.

Under the fallacious reasoning of the majority, the work remaining at San Antonio cannot remain within the scope of the agreement because they distinguish in this manner. "Furthermore, our reading of the pertinent rules leads us to the conclusion that a one-man point is not an agency or district.

To hold otherwise—would mean that the Exception to Rule 21 (a) is meaningless and unnecessary and we do not believe it is." The only conclusion is, therefore, that by this award all one-man points are outside the scope of the agreement and the award is a nullity.

Proof that Award 4427 is indeed a nullity is contained in awards of this Division in earlier disputes between the same parties; namely, Awards 1684, 1685, and 1686 (Carter) and Award 1968 (Donaldson).

In the Award 1684 dispute, claim was made in behalf of an Omaha District electrician for work performed by railroad electricians in applying generator belts to a Pullman car at Lincoln, Nebraska, a point that is neither a district nor agency of The Pullman Company. In denying the claim, the Division held as follows:

> ". . . Omaha being a district or agency, the work if performed at that point would have belonged exclusively to Pullman electricians. But at Lincoln, it was not within the scope rule and not the exclusive work of Pullman electricians."

Denial Award 1685 was issued in dispute between Pullman and its electrical workers over the question of whether or not the Company improperly permitted a Western Pacific Railroad employe to repair electrical and air conditioning equipment on the Pullman cars of the "California Zephyr" during the months of August and September, 1951, while the train was en route. The Board held under **FINDINGS** in part as follows:

> ". . . We point out that the scope rule of the applicable agreement contracts all electrical work to Pullman electrical employes exclusively that is performed in repair shops, mechanic shop Chicago, districts and agencies of the Pullman Company. Emergency repair work on operating trains or at places not within the purview of the scope rule is not the exclusive work of Pullman electricians . . ."

Denial Award 1686 covered a dispute between The Pullman Company and its electrical workers on the question of whether the Company improperly assigned other than a Pullman electrician to apply a generator belt and cover to Pullman cars at Colorado Springs on March 4, 1952. Under **FINDINGS** the Board stated in part as follows:

> "The case is identical in principle with that decided by Award 1684, (Docket 1559). Denver is a district or agency within the purview of the scope rule while Colorado Springs is not. For the reasons stated in Award 1684, the work performed at Colorado Springs was not the exclusive work of Pullman electricians and a denial award is required. The correctness of the assignment of a Pullman Company Carman to do this work is not before the Division."

In denial Award 1968 between the same parties over the question of whether the Agreement was violated when railroad employes were assigned to repair and inspect electrical equipment on Pullman cars arriving and departing at Akron, Ohio, the Board held in part as follows:

> "The organization concedes the correctness of the cited awards under the showings made by it in the respective submissions. It contends, however, that in the instant submission it has produced evidence to the effect that Akron is in fact a part of the Cleveland Dis-

trict, hence within the scope of the Pullman agreement. This evidence consists, first, of a carmen's seniority roster of car cleaners in the Cleveland District whereon is listed three (3) employes out of a total of sixty-one (61) assigned to Akron. Second, a list of alleged district and agency points stated to have been furnished by a company representative during negotiations.

We are not convinced by such evidence that the organization has proven thereby that Akron is in fact a district or agency within the meaning of the Scope Rule . . ."

Thus, if the Referee is correct in his conclusion that a one-man point cannot lie within a district or agency, then the Exception to Rule 21(a) is totally meaningless and absurd because, as held by Awards 1684, 1685, 1686, and 1968, any electricians' work arising outside of districts, agencies, repair shops and mechanic shop Chicago is not covered by the Pullman Agreement with its Electrical Workers.

The award is patently erroneous and we dissent.

H. K. Hagerman

F. P. Butler

P. R. Humphreys

W. B. Jones

C. H. Manoogian