Award No. 4730
Docket No. 4659
2-PULL-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 The Pullman Company at Hoboken, N. J. violated the current Agreement when they furloughed Electrician Michael Stanich from position E2 with regular bulletined hours of 8:00 A. M. to 4:30 P. M. on Monday, Tuesday, Wednesday, Thursday and Friday and relief days Saturday and Sunday, and on June 1, 1963 they bulletined new Position E1 as a split shift, six hours per day, seven days per week with hours of 8:00 A. M. to 11:00 A. M. and from 5:00 P. M. to 8:00 P. M. This bulletin was posted without giving Electrician George Montaque any notice that his regular position E1 with hours of 8:00 A. M. to 4:30 P. M. was being abolished.

2. That Electrician Michael Stanich be recalled from furlough and assigned to position E2 with working hours of 8:00 A. M. to 4:30 P. M. Monday through Friday with relief days of Saturday and Sunday.

3. That electrician Michael Stanich be compensated at the pro rata rate for all the time he is prevented from working the hours of 8:00 A. M. to 4:30 P. M. on each Monday, Tuesday, Wednesday, Thursday and Friday and at the time and half rate for all services performed on his relief days Saturday and Sunday by electrician George Montaque, and all such time be credited to him for qualifying days for vacation. Also his premiums paid by the Pullman Co. during this period for health and welfare and death benefit.

4. That Electrician George Montaque be compensated at the pro rata rate for all time that he is prevented from working the hours of 8:00 A. M. to 4:30 P. M. on each Wednesday, Thursday, Friday, Saturday and Sunday; and at the time and one-half rate of pay for all services performed outside of these hours on his relief days Monday and Tuesday.

5. That electrician George Montaque be assigned to position E1 with working hours 8:00 A. M. to 4:30 P. M. on Wednesday, Thursday, Friday, Saturday and Sunday with Monday and Tuesday as relief days.

EMPLOYES' STATEMENT OF FACTS: That in the Erie-Lackawanna Terminal at Hoboken, New Jersey on October 28, 1962 The Pullman Company

Chicago, districts and agencies of The Pullman Company . . . wherein the work covered by this Agreement is performed." Also, the company has shown that Rule 21 (a), including the exception therein, is confined to electrical workers in districts and agencies of The Pullman Company and that "one-man points" as set forth in the rule refers to points encompassed by the scope rule of the agreement. The company has shown that the International Representative of the I.B.E.W. in the conferences preceding the consummation of the agreement defined a one-man point as a point "where one electrician is employed." Further, the company has shown that since the applicable agreement was consummated in 1948 it has proceeded under the agreed upon interpretation of the exception in Rule 21 and has established many such positions throughout the service. Finally, the company has shown that cornerstone Award 1684 (Carter), followed by denial Awards 1685 and 1686 (Carter) and 1968 (Donaldson), prove the correctness of the company's position that the agreement between the company and its electrical workers is applicable only to points specified in the scope rule where work covered by the agreement is performed.

The organization's 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.

The claim is that the Pullman Company violated the Agreement at Hoboken, an agency, when it furloughed Claimant Stanich from position E2, which was an eight hour position, and bulletined E1, which theretofore had been another eight hour position, as a split shift, six hours per day, seven days per week. Michael Stanich, the occupant of position E1 prior to the change, bid the re-bulletined position.

The change was made under Rule 21(a) because the Pullman Company's electrical work at Hoboken had so decreased that it had become a one-man point; the one man now performs all the work formerly done by the two.

Rule 21(a) provides as follows:

> "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 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."

The claim is that the Company violated the Agreement by its action. The Organization contends that the first paragraph relates to districts and agencies, and that the second paragraph relates to "one-man points" other than "districts and agencies", and cites Award 4427 to that effect. But Rule 21(a) does not have two separate provisions,—one relating to "districts and agencies" and the other relating to "one-man points". It applies only to districts and agencies. Its title refers to "Districts and Agencies", and the body of the rule provides that:

> "The bulletined hours of service for employes in **districts and agencies** shall be 8 consecutive hours (etc.) **subject to the following exception:**" which the next paragraph then specifies.

The two provisions cannot possibly relate to two separate subjects. An exception to something cannot relate to an entirely different subject; and the three-fold use of the word "exception",—once at the end of the first paragraph of Rule 21(a), and twice in the second paragraph, together with the reference in the rule's title and body to "districts and agencies", serves to integrate the entire rule too completely for any ambiguity. "One man points" in Rule 21 (a) cannot possibly be divorced from "districts and agencies"; for it is an integral part of the rule, which as above noted, pertains to nothing but districts and agencies. Grammatically and in reason the entire rule says simply this:

> "The bulletined hours of service for employes in districts and agencies shall be 8 consecutive hours per day, * * * 5 days per week, i.e. 40 hours per week", except that "at one-man points where the service of an employe is not regularly required for a full 8 hours daily, scheduled work periods shall * * * conform to the requirements of the service;" but "this exception shall not apply where it is possible to arrange the force to conform to an 8-hour day."

It makes that statement as clearly as if it were all in one paragraph. There are not two paragraphs relating to different subjects.

The word "point" is not used in the Scope Rule and is not defined in the Agreement. But wherever used there it means "place" referring to work, and can relate only to working places included in the Scope Rule, namely "repair shops, mechanic shop Chicago, districts and agencies of The Pullman Company * * * wherein the work covered by this Agreement is performed". Award 1684, 1685, 1686 and 1968. Thus if not related and limited to "repair shops or to mechanic shop Chicago" it cannot relate to anything but districts and agencies of the Company.

In Rules 40 and 41, relating to seniority, "point" is used repeatedly as synonymous with "district" or with "repair shop, district or agency", to which seniority is confined by Rule 37.

Thus, even if the second paragraph of Rule 21(a) did not merely constitute "the following exception" mentioned in the first paragraph, we could still not conclude that "point" means something other than "repair shop, district or agency".

It is agreed that Hoboken is an agency. Consequently, if Rule 21(a), including the exception paragraph, is to be given its obvious meaning, it relates directly to Hoboken. On behalf of the Organization it is argued that the intent was otherwise; but in the absence of ambiguity or uncertainty this Board must ascertain the parties intent solely from the written Rule as adopted by them.

Consequently, we can only hold, as the parties expressly agreed in Rule 21(a), that in districts and agencies the 8 hour day applies not absolutely, but "subject to the following exception", which they proceeded to set forth in the "Exception" paragraph.

The other intent claimed by the Organization is that the exception was to relate, not to districts or agencies themselves, but merely to other "points" included in them. There is no evidence that such points have ever existed. Award 1968 involved a claim that Akron constituted part of the Cleveland District and was therefore within the Scope Rule and the Agreement. The only evidence offered as tending to support that contention was a carmen's seniority list showing that three of the 41 carmen with Cleveland District seniority were working there, and that a list of "points" at which Company employes were working included:

"AKRON (Cleve.)"

and

"CLEVELAND
Akron."

This Division was unable to conclude from such showing that Akron was part of the Cleveland District and therefore within the Scope Rule and the Agreement. But even if such points were shown to exist, we could not construe the exception to "Hours of Service. (a) For Electrical Workers in Districts and Agencies" as relating only to them, since the contracting parties did not so specify.

Finally it is argued that Hoboken is not a one-man point because in addition to the one electrician there are two clerks, a car cleaner and an agent-foreman employed there. The context of the provisions shows that its purpose was to permit a shorter split shift where the work could thus be done in less than eight hours by one employe in conformity with the requirements of the service. Certainly the presence of members of other crafts could have no bearing on that point, and was not within the contemplation of the parties when the provision was adopted. This is confirmed by the statement attributed to the Organization's International Representative during the negotiation, and not denied, that "Of course, by a one-man point we mean a point where one electrician is employed." ("Summary of Discussions in Conferences of the Management and Representatives of the I.B.E.W. on Organization's request for Rule Changes", p. 448).

Since the record shows that the changes complained of were made in accordance with Rule 21(a), and that the Agreement was not violated, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.

DISSENT OF LABOR MEMBERS TO AWARDS 4730 AND 4731

This same issue was before this Division in Docket No. 4362 which became Award No. 4427. The same arguments were advanced by the parties and were considered in detail as the findings in Award No. 4427 read as follows:

"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 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 the 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—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 electrician's 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."

The majority in Awards No. 4730 and 4731 ignored the above quoted findings and the fact that the only other time that this issue was in dispute between the parties was in June 1960 when the Carrier established a one-man operation at their San Antonio Agency. A claim was filed charging violation of Rule 21. The Carrier on appeal of this claim did re-establish the two eight (8) hour per day five (5) day a week positions and paid the Electrician who worked other than an eight (8) hour day during the time that the violation was in effect.

For the majority to render a denial award they had to rewrite Rule 21 (a) as shown on page 3 of the Award.

The majority also refers to Awards 1684, 1685, 1686 and 1968 to support their position. If you check these Awards, you will find that the issue in dispute is a violation of Rules 2 and 5 when other than Pullman Electricians were used to perform work covered by the Agreement and not Rule 21 as is the case in this dispute. In Award 1684, the claim was that the Carrier violated Rule 2 and 5 when other than Pullman Electricians performed work on Pullman cars at Lincoln. The Carrier in that dispute took the position that Lincoln was not covered by the scope of the Agreement. The majority in that Award agreed with the Carrier. But in this dispute the Carrier on page 8 of their submission admits that Lincoln is a point covered by the scope of the Agreement. So it appears that the majority accepts whatever the Carrier submits even though they take two positions on the same subject matter.

The majority also accepted an alleged statement lifted out of context from the Carrier's notes. These notes have never been submitted to this Division, so it is impossible for the majority to determine what the alleged statement was intended for. Even so the majority had to rewrite the statement to interpret it as they did. The statement reads as follows:

> "Of course, by a one-man point we mean a point where one electrician is employed."

This statement refers to a one-man point and not a one-man District or Agency. Therefore, the statement supports the Employes position and not the Carrier's.

Therefore, the claims should have been sustained.

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink