Award No. 5349

Docket No. CL-5290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the provisions and intent of the Clerks' Agreement when it removed from the scope and operation of the agreement rules certain routine clerical and related work hereinafter described occurring at Lindsay, Oklahoma, Station and assigned such work to an employe not covered by the Clerks' Agreement, an Apprentice Operator; and,

(b) This work shall now be returned to the scope and operation of the Clerks' Agreement; and,

(c) A clerical position, properly classified and rated, shall now be established at Lindsay, Oklahoma, Station, bulletined and assigned in accordance with the rules of the agreement; and,

(d) C. M. Ogle, Cashier Position No. 37, Lindsay, Oklahoma, rate $10.34 per day, and/or any other occupant of this position shall be paid an additional eight (8) hours per day at the rate of time and one-half from September 15, 1947, to the date the work is returned to the scope of the agreement and the violation corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to 1937 there were three clerical positions assigned at the Lindsay, Oklahoma, Station. Due to a gradual decrease in business at that station one of these positions, No. 36, was abolished in September, 1933; another position, No. 37, was abolished in February, 1935; and the last of the three, No. 38, was abolished in November, 1937. Thereafter, the station was operated from some time as a one-man Operator-Agent station, but when business again increased to the point where additional help was needed, Carrier, instead of reestablishing such clerical positions as were necessary, moved an Apprentice Operator into the station at Lindsay on October 26, 1943, and assigned to him the following routine clerical and related work:

Check yards and render 1301 report.
Make switch lists.
Order cars.
Keep demurrage records.
Handle baggage and express and work passenger trains.

agent-telegrapher and telegrapher-clerk and it is thus apparent that there was no improper transfer or assignment of work from employes covered by the Clerks' Agreement and there is, therefore, no support whatever for the Employes' claim.

CONCLUSION.

In conclusion, the Carrier submits it has proved conclusively that the claim of the Employes is without support under the current Clerks' Agreement and should be denied for the following reasons:

(1) The employes included in the scope of the Clerks' Agreement hold no monopoly right to performance of all clerical work;

(2) Performance of clerical work by the apprentice at Lindsay was not in violation of any agreement rules;

(3) No work was taken away from a clerical position or removed from the scope of the Clerks' Agreement;

(4) A sustaining award would be contrary to the principles and established practices of long years standing.

(5) A sustaining decision would not only ignore, but conceivably harm, the employment rights which telegraph apprentices have enjoyed for more than 45 years under the Carrier's telegraph apprentice system.

(Exhibits not reproduced.)

OPINION OF BOARD: As of June 1, 1947, and continuing through December 15, 1948, Carrier maintained the following force at Lindsay, Oklahoma: Agent-Operator, Apprentice-Operator—both with hours 8:00 A. M. to 5:00 P. M.; Operator, hours 6:00 A. M. to 3:00 P. M.; and Cashier, hours 8:30 A. M. to 5:30 P. M. The first three of the above mentioned employes were covered by the Telegraphers' Agreement. The Cashier was covered by the Clerks' Agreement. As of December 15, 1948 the Apprentice-Operator was discontinued at the station and on December 16, 1948 a position of General Clerk established and assigned to an employe covered by the Clerks' Agreement. The claim is based upon the performance of clerical work by the Apprentice-Operator from the period commencing September 15, 1947 through December 15, 1948 when the General Clerk position was established.

There is considerable discussion in the Carrier's submission concerning the long history of the Carrier's Apprentice-Operator system and the inroad which the Organization is attempting to make upon the same by the bringing of this claim. However, nowhere in the Employes' submission is there any allegation that the Carrier's telegrapher apprenticeship program is in violation of the Clerks' Agreement. Indeed, the Employes' position with respect to the question at issue herein is quite succinctly and plainly stated in their submission. They characterize the question to be resolved as whether or not the clerical work listed in the Statement of Facts was incident to or in consequence of the Apprentice-Operator's position at Lindsay. We are in accord with the Employes' statement of the issue in view of the mutually agreed to Interpretation to Articles I and II of the Agreement which Interpretation reads as follows:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employes, referred to in said Agreement, when performed by officials and others not covered by the Agreement, incident to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement."

We subscribe to and adhere to the principle cited by Carrier as established by the United States Railroad Labor Board to the effect that the

Carriers and the several crafts of railroad employes have a substantial interest in the competency of apprentices or persons under training and that opportunity to learn any craft or occupation should not be unduly restricted. An apprentice training program, however, should not be used as a vehicle for encroaching upon work included in the Scope of another craft.

It is, of course, necessary to learn by doing. Hence the use of the Operator-Apprentice in assisting in the performance of clerical work incident to or as a consequence of the duties of the positions of the Agent-Operator or Operator would not be a violation of the Clerks' Agreement, bearing in mind the Interpretation cited above. Carrier asserts that that is all that the clerical work which the Apprentice-Operator performed at Lindsay amounted to. However, the record does not bear out that contention. It appears that the Apprentice-Telegraphers who were at Lindsay for the period September 15, 1947 through December 15, 1948 performed about five hours of clerical work each day and got about three hours' practice in telegraphy. Much of that clerical work was performed independently. When the position of General Clerk was established, practically all of the clerical work formerly performed by the Apprentice was assigned to that position. If, as Carrier contends, the work which the Apprentice was doing was merely assisting in the work of the Agent-Operator and Operator, it would seem logical that, after discontinuance of the Apprentice at Lindsay, such work would have been absorbed by those positions without the necessity of creating a new one.

The record will not justify sustaining the claim as asserted. There is no proof that more than five hours of clerical work per day was performed by the Apprentice-Operator. Furthermore, under the principles stated in Award 4244, the applicable penalty should be assessed at the pro rata rate. It follows that the claim for compensation should be sustained for five hours at the pro rata rate and should cease as of December 16, 1948, the date of the establishment of the position of General Clerk. With the establishment of said position, claims (b) and (c) have become academic.

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 Carrier violated the Agreement.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 24th day of April, 1951.