

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

RUTLAND RAILWAY CORPORATION

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

(1) The Carrier violated the effective agreement when as of December 29, 1951 and January 29, 1952, they abolished three positions of Patrol Foreman and all positions on the territories identified as Sections 1, 3, 5 and 35;

(2) The abolished positions be re-established; the affected individuals be restored to their regular positions with seniority and vacation rights unimpaired and reimbursed for all earnings lost subsequent to the date of abolishment;

(3) All employees who have been required to assume expenses that would not have occurred had they not been improperly removed from their positions, be reimbursed in the amount of said expenses.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 17, 1951, the Carrier issued the following notices:

RUTLAND RAILWAY CORPORATION

M. of W. Department

Rutland, Vt., December 17, 1951

All Foremen, Sub-Division Three:

Effective Saturday, December 29, 1951, the position of Patrol Foreman on Sub-Division Three is abolished.

E. H. Lundin
Chief Engineer

Cy—Messrs. S. M. Rodgers
W. E. Lovett
N. F. Bruce
H. J. Nichols
W. H. Ross
B. W. Flanders
M. L. Safford

H. J. Brown
K. M. Chapman
J. E. Baker
F. N. Mussaw
J. E. Cooper
W. A. Johnson
I. J. Mitchell"

after being notified by the foreman to return to service, he will forfeit all seniority rights.

The employes have contended that the Carrier violated the agreement by the abolishment of the positions in question, but in their discussions with the Chief Engineer and the General Manager they have never cited any rule of the agreement that was violated.

It is the Carrier's contention that the action taken by it was not in violation of the agreement and was in accordance with past practice.

All relevant facts and arguments in this case have been made known to the employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The representative of the Organization closes his brief, submitted at the time of the presentation, in these words: "It is the position of the Organization that the transfer of a Patrolman's duties to Section Foreman and the transfer of certain section forces without negotiation with, or approval of, the Organization is in violation of the Agreement to the same extent—if not more—than the Agreement involved in Award 1296 was violated." In Award 1296 a very similar claim was sustained.

The Carrier's position can be summarized by saying it does not agree with Award 1296 and that its effect must, under no circumstances, be extended "to other Carriers having different rules or different factual conditions." The Carrier says in its brief: "Stripped of all extraneous matter, the question is a simple one, viz., whether or not 'positions' may be abolished without the approval of the Employes' representative."

It is very apparent that the Organization makes the best possible attempt to bring this case into the orbit of Award 1296 and it would have succeeded but for Rule 39 in the current Agreement which reads as follows:

"The rates of pay of employes covered by this Agreement shall become a part of and be included in this agreement. **When new positions are established in the Maintenance of Way Department a suitable rate of pay for such new position or positions shall be negotiated between the Management, the General Chairman, and his properly constituted Committee.**" (Emphasis supplied)

There was no such rule in Award 1296.

The Organization argues, "We contend that when the matter of establishing and maintaining of positions is subject to negotiation and agreement, that abolishment of those positions is similarly subject to negotiation and agreement." Here is where the Organization assumes too much because there are many refinements to that general rule that have found their way into the Awards of this Division, and Rule 39 does not require that the abolishment of positions be handled through negotiation.

There is an affidavit in the record that says an effort was made by a representative of the Brotherhood to negotiate a rule in the Agreement "requiring that any rearrangement or abolishment of sections would be subject to agreement between the Carrier and the Brotherhood," and "That after discussion, the matter was disposed of by consent of the Brotherhood that no such rule be included in the agreement."

The Organization flatly denies that this took place, but J. E. Baker, who was General Chairman, Rutland Railroad System Division, Brotherhood of Maintenance of Way Employes, who participated in the negotiation, says the matter was discussed.

For whatever it may be worth, we note that the rule under discussion (if it was discussed) is in effect on the Boston and Maine Railroad. There is some reference in the docket to a rule similar to that on another railroad. It could be the Boston and Maine which also operates in Vermont (Award 5375).

The Carrier says, "Moreover, Award 1296 has not been followed in any case that has come to this Carrier's attention." We can well believe that is true. In the more than two hundred Awards that were submitted to the referee for study in this case, Award 1296 is not cited in the opinion of any any of them. This does not necessarily mean the Award is wrong, but we do not think its doctrine ought to be extended.

It must be obvious that the net result of the Organization's contentions, if sustained, would be to give it the power of veto over the Carrier's right to readjust its operation facilities and labor demands in response to the "ebb and flow" of the traffic load, and to freeze all positions and wage rates as of a given time. The Carrier has not surrendered to that extent in this docket.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.