Award No. 7922
Docket No. DC-7980

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim is that Carrier violated and continues to violate Articles 2 (b), 4, 10 (a) and (h), and Section 6 of the Railway Labor Act, amended, when Carrier inserts in their working schedule certain statements contrary to the clear meaning of the Agreement. Particularly the statement, "Cars and crews in all groups are subject to be used for any movements, trains, messenger-trains or sections of trains enroute, before leaving or after arrival at terminal."

We, therefore, request that Carrier be ordered to correctly comply with the agreement and that all employes who have been required to perform such additional work be paid additionally.

EMPLOYES' STATEMENT OF FACTS: On May 17, 1955, General Chairman Grinage protested working schedule No. 112, effective 12:01 A. M., 1955 as being in violation of the Agreement. The protest is specifically lodged against the sentence reading: "Cars and crews in all groups are subject to be used for any movements, trains, messenger-trains, or sections of trains enroute, before leaving or after arrival at terminals".

Mr. H. O. McAbee, Manager Dining Car Department, denied our protest June 13, 1955. The matter was further brought to the attention of Mr. R. L. Harvey, Manager Labor Relations who also denied our protest on August 29, 1955.

Many employes who have been regularly assigned by bulletin to certain groups, in which they were designated certain hours of work, and certain layover time, are required to perform work during their scheduled layover and then are compelled by Carrier to forego their regular assignment.

All regular employes are advised by bulletin what group and car they are awarded.

We have processed this case up to and including the highest authority on the property in accordance with the Railway Labor Act and the Agreement. Therefore, we submit that this case is properly before your Honorable Board.

POSITION OF EMPLOYES: There is in effect an Agreement covering this class of workers which outlines the method of bulletin positions (Article 10). It states in part: ". . . bulletin to show location, title, hours of service

for a period of ten (10) days. Bulletin to show location, title, hours of service and rate of pay. Employes desiring such positions will file applications in triplicate, bearing their personal signature, two copies to be forwarded to the designated officer and one to the General Chairman within that time. The designated officer to return one copy to the applicant as acknowledgment. Award will be made within ten (10) days thereafter. The name of successful applicant will be immediately posted for a period of five (5) days."

Article 10(h) reads:

"When there is a permanent change (1) in arriving or leaving time of an assignment at home terminal of more than one (1) hour, (2) from one class to another class of dining car service, (3) of terminal, (4) in train couplets, the run or runs involved will be considered new and shall be bulletined as provided for in this agreement. The carrier also shall have the right to change assignments as may be necessary from time to time to avoid punitive overtime payments, and such changes shall be considered as establishing new runs, and shall be bulletined as provided in this agreement."

As to Article 2(b) there is no showing whatever in this precise dispute as to the establishment of any "new" classifications "of a permanent nature". The asserted application of Articles 2(b) to support the claim has no solid or substantial foundation. As to Article 10(a), the Carrier is at a loss to understand how this particular rule was in any way violated by the language that appeared in the Circular. Plainly, all the requirements of Article 10(a) were met by the terms of the bulletined working schedule, Carrier's Exhibit "A". As to Article 10(h), there is no showing of any "permanent" change in any run that would involve any asserted application of Article 10(h). There was no reason to consider any run as "new" so that it had to be bulletined. There was no change in any assignment "to avoid punitive overtime payments". Article 10(h) is not applicable.

The claim here is a general protest. It is based on an alleged impropriety surrounding certain language that appeared in the working schedule. It is alleged the language violated the rules of the agreement. Yet there is not a single showing of any alleged violation. There is no named claimant. The protest is vague and indefinite. The language of the working schedule is entirely harmonious with the rules of the working contract.

The Carrier submits that the protest "that Carrier violated and continues to violate Articles 2(b), 4, 10(a) and (h) and Section 6 of the Railway Labor Act", the request that "Carrier be ordered to correctly comply with the agreement", and the claim "that all employes who have been required to perform such additional work be paid additionally" are in part and in their entirety wholly without merit. The Carrier requests that the claim at all its parts be declined.

In accordance with the requirements contained in this Division's Circular 1 issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting dispute is a general claim based upon the allegation that all employes were affected by the issuance of certain instructions contained in a schedule issued on April 24, 1955 which read in part:

"* * * Cars and crews in all groups are subject to be used for any movements, trains, messenger-trains, or sections of trains enroute, before leaving, or after arrival at terminals."

The Organization asserts that Articles 2 (b), 4, 10 (a) and (h) were violated by the issuance of the above instructions, which had the effect of changing working conditions in a manner not contemplated by Section 6 of the Railway Labor Act. It was asserted that the effect of these instructions was to require or permit the use of extra work to make up the basic month of employes holding regular assignments, without added compensation for such extra work performed outside of, or in addition to the hours of such regular assignment, thus rendering such regular assignment meaningless.

The Respondent counters with the assertion that the above quoted instructions could be and have been made effective without any violation of the Rules relied upon in the effective agreement; and are specifically permissible since the performance of extra work (not of a permanent nature) by regularly assigned employes within the meaning of Articles 4, 5, 2 (c), 7 (a), 8 (a) and 10 (i) of the effective agreement.

As stated above this is a general claim alleging violation of the effective agreement and the institution of changes in working conditions without recourse to Section 6 of the Railway Labor Act.

There is insufficient evidence of record to indicate that any employe was injured or performed additional work (without compensation) in violation of any cited rule. We are not certain whether or not the instructions amounted to a change in the method of operations or were in truth and in fact a change in working conditions, affected by the unilateral action of the Respondent.

The jurisdiction of this Board is limited to disputes (claims) arising out of grievances, or the interpretation and application of existing provisions of the effective collective agreement. Differences arising between the parties as to changes in rules, working conditions and rates of pay are not vested in this Tribunal.

Inasmuch as it has not been shown (1) That the changed conditions (if any) are clearly prohibited by some rule of the Agreement or (2) that Respondent in issuing these instructions, effected a unilateral change in working conditions to the end that specific employes' seniority or other contractual rights were adversely affected, we conclude and so find and hold that the confronting dispute should be, and the same is hereby dismissed without prejudice.

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 this claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.