

Award No. 11669

Docket No. MW-11095

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on or about October 28, 1957, it abolished the positions of Auto Truck Operator on the Chinook and Harlem, Montana sections and thereafter required the Section Foreman on each of these sections to perform the duties of an Auto Truck Operator.

(2) The positions of Auto Truck Operator on the Chinook and Harlem sections be restored.

(3) Auto Truck Operators Joseph Feist and John Streber each be reimbursed for any monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants, Messrs. Joseph Feist and John Streber, were regularly assigned to the position of Auto Truck Operator on the Chinook and Harlem sections, respectively.

On or about October 28, 1957 the Carrier abolished the positions of Auto Truck Operator on the Chinook and Harlem sections and thereafter required the Section Foreman on each of these sections to perform the duties of the abolished positions.

In a letter dated November 4, 1957, General Chairman Anderson protested the Carrier's action as follows:

"B-12-57
November 4, 1957

Mr. V. C. Hankins, Asst. Supt. of
Maintenance Engineering
Great Northern Railway
Great Falls, Montana

Dear Sir:

First (i) of the Railway Labor Act, Article V of the August 21, 1954 National Agreement and Circular No. 1 of the Third Division.

2. The Organization has failed to sustain its burden of showing a specific agreement or rule which restricted the Carrier from the action taken in this case.

3. It is the Carrier's prerogative to abolish unneeded truck driver positions and assign the remaining truck driving as incidental to the work of other employees.

4. It has been the practice of the Carrier for many years to assign truck driving duties to any class of employees as incidental to their other work, unless there is sufficient truck driving to occupy a substantial portion of an employee's working day.

5. It is clearly beyond the jurisdiction and power of the National Railroad Adjustment Board to order Carrier to restore positions as requested by the Organization.

6. The Organization never attempted to establish while handling these claims on the property, that the claimants suffered any actual "monetary loss."

For the foregoing reasons, the Carrier respectfully requests that the claims of the Employees be denied.

All of the evidence and data contained herein has been presented to the duly authorized representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the abolishment by the Carrier of the positions of Truck Operator on its Chinook and Harlem, Montana Sections and thereafter requiring the Section Foreman on each of these sections to perform the duties of an Auto Truck Operator.

Carrier contends first that the dispute is not properly before this Board because it was initially submitted as a claim for two named employees, these appealed to Carrier's highest designated appeal officer as a general claim for unnamed Claimants, then amended again and appealed to this Board as a claim on behalf of two originally named employees.

In our opinion the initial claim was properly named and identified through the entire procedure and that it was never abandoned, amended or changed and is properly before the Board and should be decided on the merits.

The Organization claims the work of Truck Operator continued after Carrier abolished the position and that Carrier violated the effective Agreement by assigning it to the Foreman of the crew.

Classification of work was set forth in Rule 40, Section (j) as follows:

"(j) Other classes of employees covered by the scope of this agreement not here set out, such as motor car shop employees, etc., shall perform the work heretofore regularly performed by them."

That rule is part of Agreement of July 1, 1951 referred to as Schedule No. 7. Both parties here resort to practices and Agreements existing for years prior to that date contending that by such evidence we may know what was intended when rule was promulgated and we may thus interpret an ambiguous rule. (Award 11329)

On that basis the facts are that when the position of Auto Truck Operator was created it was for purpose of transporting Section Crews and tools over highways to place of work and return. By practice and agreement prior to Agreement 1951 and after, when Auto Truck Operator was not thus engaged he would work as a laborer with the Section Crew under orders of its Foreman and that it was agreed no one should be assigned to work as a Auto Truck Operator unless he was competent to work with such crew "in connection with track work," it being contemplated that only a small part of his time would be occupied in operating the truck. His pay would be at Truck drivers rate.

The facts are that the work of the operation of the truck to transport the crew and tools to and from work continued after Carrier abolished the position of Auto Truck Operator . . . the only change was that the Foreman operated the truck. It is true that size of the crew was reduced to about one-half, but the time it would take to transport the crew and tools was not shown to be substantially reduced. We do not think the reduced size of the crew transported, justified the action of the Carrier under the Agreement. Although it did not take most of the time, Claimant's primary function was to operate an Auto Truck, when needed. The number of hours not specified or intended to be specified. There is nothing to show that its operation is now different. The only difference is the driver. Had the Agreement specified the minimum of hours that would have been one thing, but it did not do so. It was held in Award 8382 (Vokoun) where only 90 minutes of work a day remained on a clerks job; the Carrier could not abolish the position and transfer the work to the Agent. If Carrier had stopped the use of the truck entirely, there would have been no violation. Award 8500 (Daughterty). Carrier's unilateral action violated the Agreement. The positions abolished should be restored, or the violation otherwise ended, and restitution should be made to Claimants for their financial losses resulting from such violation.

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 the Agreement was violated.

AWARD

Claims sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1963.

**CARRIER MEMBERS' DISSENT TO AWARD 11669
DOCKET MW-11095**

The agreement does not specifically describe or reserve truck driving to any particular class or craft and, consequently, is ambiguous insofar as it is alleged to bestow upon claimant any exclusive right to drive carrier's trucks. Under such circumstances, the principle is well established that claimant must prove the exclusive right to perform the work in question by past practice, which claimant failed to do in this case.

Award 8382 (Vokoun) cited as authority by the Referee, construed a rule prohibiting the removal "of positions or work", an altogether different rule and, therefore, inapplicable.

Award 8500 likewise misconstrued a different rule under a different set of facts and obviously could not be used as authority for this decision. Carrier Members' dissent thereto adequately points out the error in that award and is hereby adopted.

For these reasons we dissent.

W. M. Roberts

G. L. Naylor

R. E. Black

W. F. Euker

R. A. DeRossett