

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System, that

1. The Carrier violated the Agreement between the parties when it required incumbents of positions at "AY" Tower and Turner, Kansas, to assume the responsibility and perform the work of directing the movement of trains against the normal current of traffic and thereafter refused and continues to refuse to classify said positions in accordance with the work required and performed, and refused and continues to refuse to establish a satisfactory rate for said positions;

2. The Carrier shall now be required to properly classify and establish a basic rate for said positions, beginning January 27, 1958, 32 ½ cents per hour higher than the rate then in effect.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

East Tower at Argentine (Kansas City), Kansas, is located near the east end of Carrier's Argentine yards, a part of Carrier's Kansas City Terminal Division. It is commonly known and referred to as "AY" Tower and will hereinafter be so referred to.

Turner, Kansas, is located at the west end of Carrier's Argentine yards, approximately 3.2 miles west of AY Tower, also a part of Carrier's Kansas City Terminal Division which extends to approximately one mile west of Turner.

On June 11, 1951, Carrier's Division Superintendent of the Kansas City Terminal Division issued the following instructions to employees at AY Tower and Kansas City Terminal Tower 3:

as a matter of equity and in consideration of the somewhat confining nature of the duties which comprised the assignments of those positions. The Carrier's offer to negotiate was rejected by the Petitioner's General Chairman.

OPINION OF BOARD: Claimants are presently classified as "Towermen" and "Telegrapher-Clerks" by Carrier at its Argentine Yard in Kansas City, Kansas. Claimants classified as "Towermen" operate interlocking and remote control devices at the "AY" Tower located at the eastern end of the yard, while those classified as "Telegrapher-Clerk" are assigned various duties, including the operation of an electrically operated interlocking plant with controls in a tower at Turner, Kansas, near the western end of the Argentine Yard.

The instant claim concerns the Carrier's refusal to reclassify Claimants as "Tower and Train Directors," a classification found in Article I (Scope) of the controlling agreement between the parties.

Employees contend that Carrier has assigned "Train Director" work to Claimants since 1951 in that they are allegedly required to assume the responsibility for and perform the work of directing the movement of trains against the current of traffic on main line tracks between "AY" Tower and Kansas City Terminal Tower No. 3. Employees aver that such duties imposed by Carrier require independent judgment and action in directing and controlling train movements in a dense and congested traffic area. Therefore, that Claimants are in fact "Train Directors" as defined by the Interstate Commerce Commission.

Carrier maintains that two previous Awards of this Board involved the same factual situations and identical issues and, therefore, that the instant claim must be dismissed. As to the merits of the claim, Carrier asserts that Claimants work under the direction of either Train Dispatchers at Emporia, Kansas or the Yardmaster at Argentine, depending on whether the two main tracks are occupied by a passenger train or yard movement. Carrier contends that the only time any of the disputed action is necessary on the part of the Towermen at "AY" Tower and the Telegrapher-Clerks at Turner is during the infrequent occasion on which first class passenger trains are crossed over from one track to another on the two main tracks under the direction of Train Dispatchers or Yardmasters.

In the first instance, we must consider Carrier's motion to dismiss the instant claim on the basis of prior Awards rendered by this Board involving the same parties, facts and issues. In Award 7445, we denied a claim filed on behalf of Towermen assigned to "AY" Tower, Argentine for additional compensation because of increased duties and responsibilities such as those involved herein. The Opinion of the Board in part stated as follows:

"The Board is not authorized to establish rates of pay or otherwise rewrite contract provisions. If a higher rate of pay is requested because employees feel that additional duties are in fact of sufficient proportion to entitle them to that higher pay they are relegated to the procedures and provisions contained in Section 6 of the Railway Labor Act."

In Award 7445, we also dismissed without prejudice that part of the claim which alleged that Carrier should reclassify the positions of Claimants under Article II of the Agreement between the parties because such contention was

not considered on the property by the parties and therefore was not handled as required under Circular No. 1 of the Rules of the Board nor by Article V of the Agreement.

In Award 8158, we denied claims filed on behalf of Telegrapher-Clerks assigned to Turner, Kansas because of Carrier's failure to reclassify the positions held by them in accordance with the nature of the work performed and Carrier's refusal to adjust rates of pay upward to reflect the change or type and quantity of work assigned to the positions in question. The Board incorporated by reference the principles set forth in Award 7445 and found the claim for reclassification as well as additional compensation "not meritorious."

Inasmuch as Award 8158 denied the claims of employees in the "Telegrapher-Clerk" Classification at Turner, Kansas on the merits with respect to both reclassification and additional compensation, that part of the instant claim pertaining to such employees must be dismissed because the determination in the previous Award was final and binding under Section 3, First (m) of the Railway Labor Act, as amended. (Awards 8419, 8760, 8775 and 13623)

As to the Towermen assigned to the Carriers "AY" Tower, the following statement appears in our Award 7445:

"It is significant that at no time do employees contend that the additional duties, the operation of a greater number of levers, was work of a nature not properly assignable to Towermen. The Agreement contains no provision requiring pay adjustments for increased duties and responsibilities and the rule relied upon applies only 'when new positions are created'. This record, granting an increase in work, will not sustain a finding that the character of claimants positions was so altered as to create the establishment of new positions."

Employees in the instant dispute aver that Towermen at "AY Tower" exercise independent judgment in directing the movement of trains against the current of traffic on main line tracks between "AY Tower" and Kansas City Terminal Tower No. 3. This new element of responsibility was not considered in Award 7445 and warrants consideration inasmuch as the issue of reclassification was dismissed without prejudice in said Award and the instant claim is a continuing one.

Employees rely upon Carrier's comprehensive written instructions of June 11, 1951 to employees at "AY" Tower and Kansas City Terminal Tower No. 3 which contains the following sentence:

"However, the train and engine movements will be left up to the Towermen, and by working closely together, I think we can keep our trains and engines moving without excessive delay."

The thrust of Employees position is that Towermen at "AY" Tower have the same responsibilities as Towermen at Kansas City Terminal Tower No. 3, exercise independent judgment in carrying out such responsibilities and perform certain functions required by employees classified as "Tower and Train Directors"; therefore, that Claimants are entitled to such classification.

Carrier contends that claim submitted to the Board is not the claim that was considered on the property within the meaning of Article V, 1 (c) of

the August 21, 1954 Agreement, as it has been filed on behalf of incumbents of "said positions" at "AY" Tower instead of named claimants. An examination of the claim initially submitted to Carrier and the submission to the Board supports Employees' response that said claims are identical and that the Claimants are readily ascertainable by Carrier. Therefore, we find Carrier's procedural contention without merit.

Concerning the merits of Employees' averment on behalf of Towermen at the "AY" Tower, Carrier maintains that Claimants have no independent responsibility for crossover or reversing traffic as the actual direction and authority is with Train Dispatchers. Carrier asserts that it has never had employes classified as "Tower and Train Directors" on any of its System Lines, despite the fact that the classification appears in the Scope Rule of the Agreement between the parties.

Both parties cite various operating Rules and regulations in support of their conflicting contentions and seek to buttress their respective positions through Carrier's prior offer to negotiate an increase of seven (7) cents per hour in consideration of the duties which comprise the assignment of the disputed positions.

A careful study of the entire record and prior Awards 7445 and 8158 discloses the extent of the disagreement between the parties concerning crucial facts involved in this dispute. Although Employees have offered some evidence supporting their contention that Claimants possess the necessary qualifications for reclassification, the record does not contain sufficient proof that Claimants are entitled to a classification which has never been filled by Carrier anywhere on its system. In view of the conflicting evidence before us concerning essential facts, precedent Awards involving the same parties and the well established principle that the Board is not authorized to rewrite contract provisions, we have no alternative but to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1966.

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