



Award No. 14919

Docket No. TD-15831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier"), violated and continues to violate the currently effective Agreement between the parties, dated June 1, 1960, especially Regulation 5-D-1 (Part III) thereof, when on August 26, 1964, by improper notice it abolished the Power Director Positions on Zones 8 and 9 in the Harrisburg office, and further by improper bulletin notice, combined them into one position embracing the work in both zones for the purpose of affording relief on rest days.

(b) The Carrier shall now be required to compensate at pro rata Power Director rate, on each calendar day since August 28, 1964, and continuing until such time as the violation ceases, the Power Director eligible for performance of service on the abolished positions, in accordance with seniority and availability, from among the following named Claimants: A. Boyd, C. E. Moore, W. A. Rost, E. B. Williams, T. L. Bair, C. G. Lort, J. S. Rine, L. M. Boynham, F. C. Baker and D. R. Pyle, the amount of compensation due each individual claimant to be ascertained by joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Submission as though fully set out herein.

For the Board's ready reference, Regulation 5-D-1 (Part III) is here quoted in full:

"5-D-1. Doubling of Territory For Relief Purposes. The doubling of territory for the purpose of affording relief on the rest days provided in Regulation 4-C-1 shall be permitted only when agreed upon, in writing, by the Superintendent of Personnel and the Office Chairman, except that a practice, in existence on the effective date of Part III of this Agreement, of doubling territory in such cases shall be permitted to continue."

this was exactly what happened on the third trick and your organization made no protest.

Apparently, your protest this time is motivated solely by the fact that if the position had not been abolished, the Carrier would have been forced to fill certain vacancies with regular employes at the punitive rate due to a shortage of extra men who could have been worked at pro rata rates. We do not deny that in the absence of a sufficient number of qualified extra men, and until such time as other men could have been qualified, this situation would have obtained. However, it was not the reason for the abolishment of the position involved. It was abolished for one plain simple reason — it is not needed.

Moreover, we fail to see how Regulation 5-D-1, governing relief and extra work, can in any way be regarded as precluding the Carrier from abolishing a position it did not need. Furthermore, we fail to see how those regular employes named in your claim could in any way have been aggrieved by the Carrier's action. Nor could any extra employes be considered aggrieved. The work in question is still being performed by employes of the Power Directors' class and without any undue burden." (Emphasis ours.)

A copy of the letter dated September 29, 1964, is attached as Exhibit 4.

Following denial of the claim by the Supervisor, C&S, the Vice General Chairman listed the claim with the Superintendent-Personnel, who denied the claim by letter dated October 28, 1964.

The Vice General Chairman then requested that a Joint Submission, a copy of which is attached as Exhibit 5, be prepared for progression of the case to the Manager-Labor Relations, the highest officer of the Carrier designated to handle disputes on the property, and the General Chairman, A.T.D.A.

The Manager-Labor Relations denied the claim by letter dated March 11, 1965, a copy of which is attached as Exhibit 6, following which the General Chairman advised, under date of July 7, 1965, that the decision was unacceptable, advancing various reasons for such advice. The Manager-Labor Relations' reply to the General Chairman's letter is attached as Exhibit 7.

Thus, so far as the Carrier is able to anticipate the basis of the Employees' claim, the questions to be decided by your Board are whether Regulation 5-D-1 was violated in connection with the abolishment of the second trick Power Director positions, and whether the Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 26, 1964 Carrier issued a notice abolishing Power Director positions in charge of Zones 8 and 9 on second trick at Harrisburg, Pennsylvania and the relief position covering those two assignments. By the same notice two new Power Director positions (one regular and one relief) were established by advertisement.

Employees contend that Carrier violated Regulation 5-D-1 of the Agreement when by improper notice it abolished the positions of Power Director Zone 8 and Power Director Zone 9, Harrisburg and by the same notice combined the positions during the entire week and also on rest days.

Carrier's position is that the use of a single relief man to fill the rest days of a single new position which resulted from the combination of Zones 8 and 9 Power Directors' positions does not constitute a violation of Regulation 5-D-1.

Employees' contention, that Carrier's action of abolition of old positions and establishment of new positions was invalid, cannot be sustained. In Award 14918, before this referee, relating to the same incident out of which this claim arose, finding was made in that claim that the abolition of old positions and establishment of new positions were valid.

The same finding is, therefore, made herein that Carrier properly bulletined and established the position of Power Director Zones 8 and 9, second trick, rest days, Tuesday and Wednesday and also position of Power Director, Relief, Zones 8 and 9.

The facts reveal that the purpose for the abolishment of the positions of Power Director, Zone 8 and Power Director, Zone 9 was because the need for two separate positions no longer existed. The reason for the establishment of the position of Power Director, Relief Zones 8 and 9 was to afford relief to the Power Director, Zones 8 and 9 on his rest days.

The record shows that Relief Power Director relieves a single position on the rest days of that position and performs the regular assignment of one man on the rest days.

There was no showing that the territory was doubled for the purpose of affording relief.

The finding must be that when Carrier properly combined Power Directors' positions into the one position of Power Director Zones 8 and 9, second trick, and then properly established a single relief man to fill the rest days of the Power Director, Zones 8 and 9, such action did not constitute a violation of Regulation 5-D-1.

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 Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.

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