

265
Award No. 15134
Docket No. TE-11764

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Washington Terminal that:

1. Carrier violated and continues to violate the agreement between the parties when, effective June 15, 1958, it declared abolished three positions (first, second and third shift) of Assistant Train Director at K Tower, Washington, D.C., and required the occupants of the positions (first, second and third shift) of B&O Train Director at K Tower to perform the work thereof in addition to their regular duties.
2. Carrier shall be required to compensate the occupants of the first, second and third shift B&O Train Director positions each in the amount of a day's pay at the Assistant Train Director rate, in addition to compensation paid for their regular positions, on each day required to assume these added duties and responsibilities beginning on June 15, 1958, and continuing thereafter on a day to day basis until the violation is corrected.
3. Carrier shall be required to compensate all employes displaced as a result of the violation for all wages lost and expenses incurred, beginning June 15, 1958, and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board, and by this reference are made a part hereof.

This Carrier operates a terminal railway facility in Washington, D. C., handling trains of several carriers, viz., Baltimore & Ohio, Chesapeake & Ohio, Pennsylvania, Richmond, Fredericksburg & Potomac, and the Southern. Its primary business is the handling of passenger trains of these carriers, which involves not only handling the entrance and exit of the trains at the station, but also the breakdown, makeup, storing and servicing of cars and engines and such related service. It maintains three telegraph offices and

three interlocking towers manned by employes under the Telegraphers' Agreement. The tower with which we are concerned in the instant dispute is the largest, and is designated as K Tower.

Prior to June 15, 1958, the positions (all 7-day positions) in the various classifications at K Tower were as follows:

Train Directors in Charge	— 3
Train Directors	— 6
Assistant Train Directors	— 3
Levermen	— 6
Levermen-Clerks	— 3

The force was evenly distributed, providing the same number of positions in each classification on each of the three shifts covering 24 hours. The shifts changed at 7:00 A. M.; 3:00 P. M.; and 11:00 P. M. There were two Train Directors on each shift. Due to a division of territory and duties, the Train Director handling the movements to and from Tracks 1 to 12, inclusive, where B&O trains are predominant, is designated as B&O Train Director. The Train Director handling movements to and from Tracks 13 to 30, inclusive, where PRR trains are predominant, is designated as the PRR or Low Level Train Director. The positions in K Tower are all 7-day positions, and several rest day relief positions are necessary to perform the rest day relief work.

On June 2, 1958, the Carrier issued the following bulletin notice:

"N O T I C E

Washington, D. C.
June 2, 1958

TO ALL TOWER FORCES:

Effective with the last tour of duty, June 7, 1958, the following positions are abolished:

Assistant Train Director	— K Tower — 7 AM — 3 PM
Assistant Train Director	— K Tower — 3 PM — 11 PM
Assistant Train Director	— K Tower — 11 PM — 7 AM
Leverman-Clerk	— K Tower — 11 PM — 7 AM
Relief Positions	— R-4 — R-5 — R-6 — R-7 R-8 — R-9 — R-11 — R-12

The following positions are established and will be effective starting with the first tour, Sunday, June 8, 1958:

Relief No. 4 — Sun. — ADO.

Mon. — C Tower, Asst. Train Director, 7 AM-3 PM
Tues. — C Tower, Asst. Train Director, 7 AM-3 PM
Wed. — A Tower, Asst. Train Director, 7 AM-3 PM
Thur. — A Tower, Asst. Train Director, 7 AM-3 PM
Fri. — K Tower, Train Director, 7 AM-3 PM, B&O Side
Sat. — ADO.

ment of the Assistant Train Director positions at K Tower. (The Train Master's reply dated December 27, 1958 is attached as Exhibit H.) Under date of February 13, 1959, Local Chairman Wicklein replied to the Train Master's letter of December 27, 1958, and notified the Train Master that he was referring the matter to General Chairman Rapp for further handling. (Copy of Local Chairman Wicklein's letter of February 13, 1959 is attached as Exhibit I.)

Under date of February 18, 1959, the General Chairman appealed the Train Master's decision in the alleged claim covered in Local Chairman Wicklein's letter of October 31, 1958. (Copy of the General Chairman's letter and attachment included as Exhibit J.)

It was mutually agreed that conference for the purpose of discussing the General Chairman's appeal would be held April 22, 1959. The Carrier's position with respect to the discussions in conference and the Manager's denial of the appeal is contained in the Carrier's letter dated April 30, 1959 (copy attached as Exhibit K). Two months later, the General Chairman wrote acknowledging receipt of the Manager's letter of April 30, 1959, and for the first time identified the claimants covered by the alleged appeal submitted by Local Chairman Wicklein under date of October 31, 1958. (Copy of the General Chairman's letter of June 30, 1959, is attached as Exhibit L.) Nothing further was heard from the Organization until the Carrier received a copy of the Organization's notice to the Board of its intention to file an ex parte submission in the dispute listed in the "Employes' Statement of Claim."

In the meantime, the Organization, under date of July 30, 1958, had served notice on the Carrier of the desire of the Organization to amend the current agreement by adding the following:

"No position in existence on July 1, 1958 will be abolished or discontinued except by agreement between the Carrier and the Organization."

The parties did not come to agreement, and under date of May 19, 1959, the National Mediation Board docketed the dispute as Case A-6010 and stated that a mediator would be assigned as soon as possible, consistent with prior commitments. (Copy of the Organization's notice is attached as Exhibit M.) To date nothing further has been heard from the National Mediation Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective June 15, 1958, Carrier abolished, among others, positions of first, second and third shift Assistant Train Director at K Tower, Washington, D.C., and assigned their duties to the first, second and third shift "B&O Train Directors" at the K Tower, to be performed in addition to their regular duties. Commencing on June 15 and continuing through October 25, various tower employes filed individual time claims for alleged dual service. None of these claims as they appear in the record stated what part of the Agreement was claimed to have been violated, and each appears to have been based on a single occurrence on the day for which the claim was made. Each of these claims was timely denied by Carrier. On October 31, 1958, Local Chairman Wicklein addressed a letter to Carrier's Train Master as follows:

"Dear Sir:

Article 29 requires 30 day notice for changes in any rule with conference and agreement.

Since Carrier desired to change Article 28 by abolishing all Assistant Train Director positions at K, and consolidate work with other positions and have other employees take on the duties of the abolished jobs, carrier was required to handle the matter in accordance with Article 29.

We claim Articles 28 and 29 have been violated, and ask that the following claim be applied:

STATEMENT OF CLAIM:

1. Carrier violated the agreement between the parties hereto, when at 7:00 A. M., June 15, 1958, it declared abolished the first shift, second shift and third shift, seven day positions of Assistant Train Director at K Tower, Washington Terminal, Washington, D. C., without written notice and negotiations as required under Article 29.
2. Carrier violated the agreement between the parties hereto when, commencing at 7:00 A. M., June 15, 1958, and continuing thereafter, it required the occupants of the first shift, second shift, and third shift positions of B&O Train Director at K Tower to assume, undertake and perform the duties of the Assistant Train Director in addition to their regular duties, without compliance with the provisions of Article 29.
3. Carrier violated the agreement between the parties hereto when, commencing at 7:00 A. M., June 15, 1958, and continuing thereafter it merged, combined and consolidated the work, services and duties of positions of first shift, second shift, and third shift, Assistant Train Directors with the work, services and duties of the positions of first shift, second shift and third shift B&O Train Directors at K Tower.
4. Carrier shall be required to restore the positions of first shift, second shift, and third shift Assistant Train Director at K Tower to the same status as that prevailing prior to 7:00 A. M., June 15, 1958.
5. Carrier shall compensate all employees holding the positions of Train Director-B&O on the first shift, second shift and third shift at K Tower, 8 hours at the rate of the Assistant Train Director position, in addition to the compensation received for their regular position as B&O Train Director, commencing June 15, 1958, and continuing until such time as the violation is corrected.
6. All other employees displaced as a result of violations hereinbefore set out shall be compensated for all wages lost and expenses incurred.

Please advise when Assistant Train Director positions at K Tower will be restored and payroll period that time claims will be allowed.

Sincerely yours,"

Carrier argued on the property that this letter was a fresh claim, and not an appeal of the June 15 through October 25 time claims, and that, since it was based on the abolition on June 15 of the three ATD positions, it was filed too late to be considered on its merits under Article 21 of the Agreement, which requires that claims be presented within 60 days from the date of the occurrence on which the claim is based.

Employes argued on the property that the October 31 letter was an appeal of the June 15 through October 25 time claims and that, in any case, the claims were of a continuing nature, beginning on June 15, and continuing until the violations would be corrected.

The October 31 letter does not hold itself out to be an appeal of the individual time claims, nor does its text specifically mention those claims at all. In addition, it introduces as its basic complaint such new and changed substance (the alleged breach of Articles 28 and 29 by the abolition of the three ATD positions without negotiation with and written notice to the Employes) that its disposition by discussion of the parties would have to be as of a different claim from the individual time claims. We find that the October 31 letter was not an appeal of the individual time claims and that it was a new claim based on the abolition of the three ATD positions on June 15.

We have dealt with the argument that a claim based on the alleged improper abolition of positions and the consequences thereof sets up a continuing claim in a number of our awards, among them Award Numbers 10532, 11167, 12045, 12984, 14131, 14450 and 14826. These awards hold uniformly that the occurrence on which the claim in each case was based was the abolition of the position, which took place on only the one date and, while "A continuing liability might result, this does not create a continuing claim." (Award 11167.) This claim was based on the abolition of positions on June 15; it was filed on October 31. The Claim was thus not filed within the time limits required by Article 21, and we will not consider it on its merits.

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 Claim was not timely filed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1967.

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