



Award No. 16531
Docket No. CL-16485

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6020) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when effective with termination of assignments on February 26, 1965, it abolished four positions, Head Shipping Clerk, 2-Shipping Clerks and Laborer in the Stationery Department, and contracted or farmed out the work of the abolished positions to Victor Business Forms, Division of the Victor Comptometer Corporation, 720 Forrest Road, N. E. Atlanta, Georgia.

(b) The clerical work involved shall now be restored to the scope and operation of the Clerks' Agreement.

(c) Messrs. R. E. Dearhart, C. R. Bowen and C. R. Lawrence shall be compensated at the daily rates of \$19.96, \$18.79 and \$18.31, respectively, and Mr. T. Smith shall be compensated for 8 hours at the hourly rate of \$2.1628, for each day beginning on March 1, 1965, and continuing, five days each week, until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimants in this case hold seniority and the Southern Railway Company.

The "STATIONERY DEPARTMENT SENIORITY ROSTER", dated July 1, 1963, shows Mr. R. E. Dearhart with a seniority date of May 21, 1941; Mr. C. R. Bowen with a seniority date of July 1, 1963, and Mr. T. Smith with a seniority date of October 16, 1946. Since Mr. E. M. Page, Stationer, has not furnished us with the current roster, Mr. C. R. Lawrence's seniority date is not shown here.

"RULE 46.

PRESERVATION OF RATES AND EMPLOYMENT

* * * * *

(f) (2) Nothing in this Rule 46 shall affect or prevent the abolishment of positions at any time."

OPINION OF BOARD: It has long been held by this Division (as far back as Award No. 180) that work which has traditionally been that of employees covered by the Agreement cannot be unilaterally removed and given to others outside the scope of the Agreement. For more than half a century Carrier has maintained a Stationery Department at its General Offices in Atlanta. It consisted of office and shipping personnel, and handled purchasing, stocking and distribution of stationery, printed forms and office supplies. Claimants had handled the stocking and shipping operations. Effective February 26, 1965, their positions were abolished and the functions they had performed were taken over by Victor, and unrelated company.

Rule 3 provides:

"This agreement becomes effective October 1, 1938, and supercedes and cancels all former agreements but does not, unless rules are specifically changed, alter practices or working conditions established by or under former agreements.

It is apparent that Claimants' work is covered by the Agreement, and its removal to persons outside the coverage of the Agreement was therefore improper. Carrier asserts it has the right to abolish positions, but Rule 20 provides that in such cases the positions shall be those "which are no longer needed." The Employees contend that the fact that Victor is performing Claimants' work is evidence that the positions are, in fact, needed. Obviously they are.

When the changeover occurred all supplies on hand, as well as the bins they were in, were transferred to Victor's warehouse. The Employees stated in their ex parte submission, without refutation by Carrier, that Carrier continued to purchase from various suppliers and the merchandise was now sent to Victor, as it had formerly been delivered to Carrier for storing and subsequent shipping to Carrier's offices. Requisitions continue to come to the Stationery Department and are forwarded to Victor for filling. Thus the major transformation is the use of Victor's facilities and personnel, rather than Carrier's, for the same work.

According to the Employees, Carrier has simply "farmed out" the work of employees holding seniority, in violation of the Agreement. Carrier argues that it had the right to eliminate an unnecessary and expensive function, which had never been exclusive with Claimants, and it also had the "right of purchase," which had long been sustained by this Board.

The "right of purchase" by carriers has been upheld in cases of pre-wired signal relay cases, pre-stamped identification tags, slip covers, pallets, ets. Consequently if this were a case of Carrier buying printed forms, stationery and office supplies, which the sellers were shipping directly to Carrier's offices, it would constitute merely another example of "right of purchase."

But there is a considerable difference between products and services. The "right of purchase" has not been found to violate the Agreement when something is bought, even where it embodies certain work previously performed on the property. It is quite different where services are "purchased." Virtually every activity of Carrier could then conceivably be turned over the outsiders. Aside from whatever product or products Victor itself may manufacture or sell, Carrier has purchased nothing with this arrangement except the services of Victor's employes in place of its own. This is contracting out, and not the purchase of a commodity.

Carrier also relies on the non-exclusivity doctrine, which denies claim to work that has not been within the exclusive province of the Employees. Carrier notes that local offices had always bought some of their supplies locally. This is acknowledged by the Employees and unchallenged. But the Claimants' clearly had exclusivity in the central stocking and shipping of supplies that were not purchased from and delivered directly by the seller to Carrier's offices. No one else had ever done such warehousing and shipping of the Stationery Department items since 1912, except the occupants of these positions. Now Victor receives the merchandise from various suppliers, warehouses it, and ships it as requisitioned.

Claimants have no right to claim jurisdiction in the local purchasing process, but they cannot properly be replaced in the specific functions which they had hitherto performed exclusively. If there were no longer any warehousing, and merchandise purchased from suppliers were shipped directly, Claimants could not sustain their claim. As it is, they have established violation of the Agreement.

The larger number of awards have held that restoration of work to the unit should not be directed by the Board; 13125, 14088 and 14588 are examples. However, others have sustained such claims (11554, 12822, 12981). Where the violation of the Agreement is of a continuing and permanent nature, the appropriate remedy is a direction to restore the status quo ante. Tribunals in other industries do award the restoration of work which has been wrongfully removed from a unit.

Monetary damages are awarded to cover whatever loss may have been sustained by Claimants. According to Carrier, as of the date of the submissions, each Claimant was at least as well off as he had been in his abolished position. However, changes may since have occurred, and each is entitled to be made whole, up to the date that the violation ceases.

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 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 Agreement was violated.

AWARD

Paragraph (a) of the Claim is sustained.

Paragraph (b) of the Claim is sustained.

With respect to Paragraph (c) of the Claim, each Claimant shall be made whole for loss of earnings, if any, as the result of the abolishment of his position on February 26, 1965.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1968.