Award No. 19080

Docket No. TE-17112

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES (FORMERLY TRANSPORTATION-COMMUNICATION EMPLOYEES UNION)

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employes Union on the Central of Georgia Railway Company, that:

1. Carrier violated the agreement between the parties when on Saturday, Nov. 13, 1965, it failed and refused to call Agent-Operator J. B. Benton to perform his contractural work of billing cars from his station and required and permitted Clerk Rufus Jones, an employe not covered by the Agreement, at Albany Yard, a distance of some 36 miles from Arlington, Ga., to bill four (4) cars of lime rock from Singletray, Ga. to Barretts, Ga. via Albany-ACL-G&F Ry.

2. Carrier shall compensate J. B. Benton, agent-operator at Arlington, Georgia for one call, two hours at time and one-half for the violation set forth.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Central of Georgia Railway Company and this Union, effective October 31, 1965, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employes now appeal to your Honorable Board for adjudication.

Carrier's station at Arlington, Georgia is a one man Agency, manned by an Agent-Operator assigned to work five days per week, Monday through Friday with rest days, Saturday and Sunday. The incumbent's assigned hours are 8:00 A. M. to 5:00 P. M. with one hour for meal period deducted. There is a blind siding bearing the name Singletray which is under the jurisdiction of

OPINION OF BOARD: Claimant is Agent-Operator, a position covered by the agreement, at a one man station at Arlington, Georgia. Also under his jurisdiction is a siding at Singletary, Georgia, 3 miles away, where an important customer of Carrier is located. Claimant works Monday through Friday performing all the station work needed at Arlington including whatever work is necessary at Singletary.

On the day in question, November 13, 1965, a Saturday, one of Claimant's rest days, it became necessary for the shipper to load four (4) cars at Singletary. Claimant sought permission of the Assistant Superintendent to work overtime and was denied. The work of making the papers for these four (4) cars was assigned to a Clerk at Albany, Georgia, about 36 miles from Arlington, during his assigned work time. He made a "brief memo or slip bill for these cars." On Claimant's next work day, November 15, he (Claimant) checked the rates and ran the extensions and typed the revenue bills. It is undisputed that Claimant performed the work of making waybills for cars from Singletary during Monday through Friday.

Carrier contends that Petitioner has not proved that the work in dispute was reserved exclusively for the Employes. Petitioner concedes that the work involved is not reserved exclusively to Employes system wide but contends that the theory of exclusivity is not applicable to one man stations such as involved herein or where the regular employe is entitled to a call under Rule 6(n) of the agreement. Carrier contends that Rule 6(n) "Work on Unassigned Days" is not available to Petitioner as it was not raised on the property. Petitioner contends it was raised on the property.

The question of whether Rule 6(n) of the agreement is cognizable must first be discussed. There is, it should be noted, no difference between the claim as presented on the property and the claim before us. Rule 6(n) reads as follows:

> "When work is required by the carrier to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Petitioners in its letter of January 1, 1966 filing the Claim stated, in part, the following:

> "It is our position that Rule 1 (Scope Rule), Rule 3 (Seniority), and the entire agreement was violated when Clerk Rufus Jones performed the work of Mr. Benton. It is evident that the Carrier agreed with our position when it paid two (2) similar claims on July 4, 1963 and Nov. 6, 1964. Also, the following awards from the Third Division of the Railroad Adjustment Board sustains our position: Award 6693 — Referee Leiserson, Award 6975 — Referee Carter, and Award 7590 — Referee Larkin."

After Carrier raised Rule 6(g) in its letter of February 15, 1966 in defense, Petitioner stated the following in its letter of February 26, 1966:

> "It is evident that you are trying to read into Rule 6, Paragraph G, something that is not there for award after award has consistently ruled that if work belonging to an employe covered by this craft is

performed by him five days per week, he is entitled to perform the same work at any other time."

It is noted that Award 6693 is a case involving a rule similar to Rule 6(n). Moreover, if the letter of January 1, 1966 did not alert the Carrier the letter of February 26, 1966 emphasized the basis of the claim. We are persuaded with the reasoning in Award 11644 as follows:

> "It is true that, generally, matters raised for the first time on appeal to this Board may not be considered. This does not apply to Agreements and agreed interpretations of such Agreements. Both parties are charged with full knowledge of applicable rules, agreements and interpretations. These are always proper for Board consideration whether they were or were not specifically presented and discussed on the property. When * * *"

We do not have to rely on that reasoning solely as we find that the Petitioner through the letters quoted above put the Carrier on notice as to the basis for the Claim and that it effectively raised Rule 6(n) on the property. We find further that Carrier was not misled.

On the basis of the record we find that Claimant herein was the regular employe. There is no evidence of an available extra or of an employe who had not worked 40 hours. Accordingly, Claimant should have been called.

On the basis of the foregoing it is unnecessary to discuss the question of the applicability of the one man station awards to this situation. Moreover, reliance on the theory that Petitioner must prove exclusively is misplaced where there is a specific rule. See Awards 6689, 13824 and others.

Accordingly we shall sustain the claim.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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