NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19833

THIRD DIVISION

Docket Number CL-19856

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(J. F. Nash and R. C. Haldeman, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7120) that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised when on July 1, 1970, it abolished all clerical positions (Group #1) at Manchester, New York, and gave the duties and/or work of these positions to Yardmasters and others excepted from the Agreement to perform and/or absorb and

(b) Carrier shall now be required to pay the Employes adversely affected Thomas M. Boardman, Donald H. Mullin, Phyllis Blaisdell and Maxine Tobey, for each and every working day from July 1, 1970 up to and including such time as this violation is corrected.

(c) Carrier shall now be required to restore this work to Employes under the Agreement between the parties effective May 1, 1955, as revised.

OPINION OF BOARD: The Organization alleges that Carrier violated Rule 1 of the Agreement, the so-called "SCOPE" Rule, which reads, in material part:

> "Positions or work coming under the scope of this agreement shall not be removed and transferred to employes coming under the scope of another agreement (except in the case of reduction of clerical forces to establish a one man agency) except by mutual agreement."

It is contended that Carrier's act of abolishing all clerical positions at Manchester, New York on July 1, 1970; coupled with an alleged transfer of clerical duties to Yardmasters and others constituted the violation.

Among other defenses, Carrier questions the propriety of the claim and raises the question of an absence of a "continuing claim." The Carrier asserts that the Organization failed to specify any dates, times and/or availability of the alleged Claimants and did not furnish any data as to the positions involved nor any data in connection therewith.

The August 24, 1970 claim, was filed within sixty (60) days of the date of the occurrence upon which the claim is based (July 1, 1970). The claim stated, "Any and all employees adversely affected are entitled to compensation, from date of the abolishment of their positions July 1, 1970, for each and every working day up to and including such time as this condition is corrected." Thereafter, the clerks, allegedly entitled to relief, were specifically identified. Moreover, the claim protested the abolishing of clerical positions; permitting and allowing Yardmasters and others to perform the duties, etc., and asserted, among other things, a violation of the Scope Rule.

Thus, the Board finds that a proper grievance was submitted under Rule 33(a).

The Carrier contends that, in any event, the "....claim is too vague and indefinite." It suggests that "Nowhere has there been any data furnished as to how Claimants were affected, what work was performed that Claimants were entitled to, when the work was performed, who performed the work, etc." A consideration of this contention controls the ultimate determination of the disput ,

When an employer requires performance of certain work, absent contractual exceptions, that work is reserved to employees in the appropriate collective bargaining unit, as the heart of the collective bargaining agreement is the right to perform the work vested in the employees in the unit. See AWARDS 11072 and 14591 (Dorsey).

But, in order to fully consider an alleged violation of a "Scope" Rule, this Board must have before it a record which shows the particular work (and amounts of same) which is allegedly wrongfully taken. Whether or not the theory of exclusivity is present, there must be some understanding of previous work assignments, or custom and tradition of job performance, in order to render a sound and definitive determination. In short, the Board must be aware of the particular work in question and its method of asserted removal. A thorough review of the record fails to supply the Board with very much more than ultimate conclusions.

The initial claim of August 24, 1970 states merely that the Carrier abolished all clerical positions and permitted or allowed Yardmasters and others to perform and/or absorb the duties and/or work of positions coming under the agreement. The October 6, 1970 reply to the claim stated that "This office has no knowledge in what manner you consider the rules violated or how you support this vague claim you make."

On November 21, 1970, the Organization appealed, and stated, "In addition it is common knowledge that the Yardmasters at this point are absorbing and or performing the work and/or duties of the clerical positions that were abolish

The November 21, 1970 appeal was denied on January 12, 1971 because no additional information was given in support of the claim.

Finally, in the March 4, 1971 appeal to the Carrier's Director of Labor Relations, the Organization asserted that: (1) Yardmasters made certain calls to the Bunkhouse, advising the name of the Train, boarding time and who to call; (2) if there is a vacancy on a Rochester freight job run out of Manchester, the Yardmaster calls extra Manchester men to fill the job, and the Yardmaster may call the regular crews to advise then if Management has decided to "lay the job in for a certain day"; (3) Yardmaster hands out paychecks each week when the Agent is out "which is most of the day as he covers stations other than Manchester"; (4) Yardmaster advises the Trainmaster the time requirement to comply with the "16-hour law"; and (5) the regular day Yardmaster fills out forms showing which Yardmaster worked on each shift and the names of each janitor-bunkhouse attendant working each shift. Further, the Organization asserted that the above cited duties were performed by clerical forces at Manchester prior to July 1, 1970, and all other clerical work performed at Manchester is performed and/or absorbed by other than clerical employees. (underscoring supplied)

While the Organization did, in its March 4, 1971 appeal, finally assert some duties concerning its claim, as pointed out in the Carrier's April 25, 1971 denial, the assertions failed to specify any "... dates, times, names of employees involved or how they were affected....".

Some seven (7) months after the final denial on the Carrier's property, the Organization forwarded to the Carrier some additional documentation concerning the alleged violation, but again, the assertions were conclusionary in nature and generally lacking in specific details concerning times, places, people, etc. In any event, the document was received at such a late date that the weight to be afforded it is questionable.

The Organization has submitted numerous Awards to the Board, for its guidance, which sustained claims of "Scope" Rule violation. Those Awards have been carefully reviewed. It appears, in those Awards, that the question of work removal was admitted (or the parties agreed that, in fact, it had occurred), undisputed or clear cut. Here, the Board is unable to assess, from the record, the nature and extent of the asserted removal, and if the Board were to find a violation, it would be operating on pure speculation, with no real understanding of the type and quantum of work which may or may not have been removed - to whom, and under what circumstances. Obviously, a meaningful Award would be practically impossible.

This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a Carrier must not be found guilty of such a severe violation without more than a conclusionary allegation, supported by a few isolated assertions which fail to

specify with any degree of certainty the specific nature, times and amounts of removal. The burden of proof rests with the Organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the Claimant to produce sufficient evidence to support the version of the facts upon which it relies. See AWARD 10067 (Weston). Here, we have just a fleeting glimpse of the asserted facts.

> "The record does not reveal the particular work or amounts of it allegedly wrongfully taken from clerks. Clerks' submission consist only of statements of ultimate facts not proven by substantial evidence of probative value. The burden of proof is clerks. It failed to satisfy the burden. We, therefore, must deny the claim." AWARD 14682 (Dorsey)

> "The claim is vague and indefinite, and the Organization, being the proponent, always has the obligation of presenting factual evidence to substantiate its claim and this must be done by a preponderance of evidence. This the organization has failed to do.*** The evidence presented in the instant case is not sufficient to warrant a sustaining award. We will dismiss the claim." AWARD 15536 (McGovern)

See also AWARDS 15765 (Harr), 16174 (Heskett), 16486 (Perelson), 16675 and 16676 (McGovern), 16870 (Ritter) and 13848 (Kornblum).

Determinations of Rule violation should, whenever possible, be made on the specific merits of each individual case. In that manner, in the final analysis, all parties are better served. Unfortunately, in the case at issue, this Board is unable to consider and discuss the dispute in that light inasmuch as we have before us only ultimate conclusions, without factual demonstrations sufficient to base a determination. In short, the claim must be dismissed because the Organization failed to submit factual evidence for our consideration.

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 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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. W. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.