NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21270
THIRD DIVISION Docket Number CL-21333

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, ( Freight Handlers, Express and Station Employes
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7984, that:

1. The Carrier violated the Telegraphers' Agreement when it failed to allow Mr. W. C. Whitaker the Mobile Agent position at Windsor, Vermont.

2. Mr. Whitaker shall now be allowed eight (8) hours pay at rate of $5.7880 per hour for September 30, 1974 and each subsequent day until violation is corrected.

OPINION OF BOARD: Claimant held the position of Mobile-Agent with Carrier being headquartered at White River Junction, Vermont, working from 1400 to 2200 hours, with Saturday and Sunday rest days, and au hourly rate of pay of $5.7879. The duties of the Mobile Agent position consisted of agency work between Randolph, Vermont end Windsor, Vermont, 14 wiles apart.

Under date of August 13, 1974, Carrier issued a Bulletin to employes concerned that the position of Mobile Agent, headquartered at White River Junction, would be abolished after tour of duty Friday, August 30, 1974. Subsequently, under date of August 20, 1974, Carrier issued Vacancy Notice No. 11 establishing a Mobile Agent position with headquarters at Windsor, Vermont. This position at Windsor entailed working from 1800 to 0300 hours (including one hour meal period), with rest days of Saturday and Sunday, and an hourly rate of pay of $5.7880. The duties of this position were to cover the territory between Windsor, Vermont and Randolph, Vermont, effective Sunday, September 1.

Under date of August 28, 1974, Claimant filed a request with the Chief Dispatcher's Office requesting the position under the provisions of Rule 13(c) and 14(e) of the Working Agreement.

However, under date of August 30, 1974, Carrier assigned a one W.A. Dubois to the Mobile Agent position at Windsor. Mr. Dubois had been a telegrapher at Windsor, whose job had been abolished at the same time that the Mobile Agent position was established.

Claimant thereupon grieved the denial of his bid for the Mobile Agent position at Windsor, and the grievance was processed through the appropriate channels without being successfully resolved. The matter is now properly before this Board.

The pertinent rules of the Working Agreement applicable to the instant case are as follows:

Rule 13
Positions Abolished, Displacements, Furloughs
* * * * *

(c) In event an abolished position is re-established within thirty (30) days the employe affected by the abolishment may return thereto, if desired, without same being advertised. Those employes displaced as the result of the abolishment may likewise return to former positions.

Rule 14

Basis of Pay, Classification, New Positions, Etc.
* * * * *

(e) Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work which will have the effect of reducing the rates of pay or evading the application of these rules.

Rule 6
Starting Time

(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours notice to the employes affected.

(b) In one shift offices, work shall begin between six (6) A.M. and nine (9) A.M., or six (6) P.M. and nine (9) P.M. Deviations from provisions of this paragraph (b) desired by either party, may be agreed upon by the proper Officials of the Railway and the General Chairman. In other offices no shift shall begin between twelve (12) o'clock midnight and six (6) A.M.

(c) If assigned hours are changed, other than by regular bulletin, the General Chairman will be advised of such change.

Now, it must be remembered that on questione of contract interpretation the power of this Board is limited to an interpretation and application of the contract. This Board has no power to add to or subtract from or modify any of the terms of the agreement between the parties.

Underlying the need for contract interpretation is the fact that language cannot always be tailored to fit precisely the variant meanings which parties to an agreement may have in their minds. Language is frequently used which is general in nature and flexible enough to include those meanings which future experience necessitates being filled in. A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.

Turning then to the instant case, there is a disagreement between the parties pertaining to the interpretation of the words "new" and "position", which are used in 13(c) and 14(e) of the Agreement. Moreover, there is a further difference of opinion over the meaning of the word "rules" in 14(e).

Now, this Board must give words their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special colloquial meaning. Wore-over, in the absence of a showing of mutual understanding of the parties to the contrary, the usual and ordinary definition of terms as defined by a reliable dictionary should govern.

The American Heritage Dictionary of the English Language (1969 Edition) defines "new" not only as being "of recent origin", but more importantly as being "different and distinct from what was before." "New" thus is a broad general term having reference to both time and condition.

The same dictionary defines "position" as meaning "a post (position) of employment; job." "Job" is defined as "a position in which one is employed."

Roberts' Dictionary of Industrial Relations (1966 Edition) similarly defines "position" as "job".

Therefore, in light of the above, the Board must conclude that the position of Mobile Agent at Windsor was not a "new position" when compared to the Mobile Agent position at White River Junction. The job duties are the same, the hourly rate of pay is the same, and the days off are the same. The only differences are the location (14 miles apart), and the hours of work. Such differences, however, do not make a "new position".

This interpretation is also supported by Rule 6 of the Agreement.' Rule 6 gives no indication that when the starting time of a position is changed that a "new position" is created.

In addition, Article II, Section A of the provisions adopted by Arbitration Board No. 298 in 1968 talks about designating a headquarters point for each regular position and specifies that no designated headquarters point may be changed more frequently than once each 60 days. There is no indication, expressed or implied, that a change of headquarters point provides for the establishment of a new position.

Furthermore, Second Division Award 6038 goes to the issue of whether a movement of headquarters brings on the creation of "new" jobs. The Board in that case stated:

> The facts disclose that Carrier's antiquated depot in Downtown Ft. Wayne, Indiana was condemned and a new Division Office Building was opened on the outskirts of Ft. Wayne, Indiana. The Organization maintains that because of the movement of the Headquarters, the involved positions should have been rebulletined for the reason that the change of address brought on a creation of new jobs. This contention is not well taken. The move from one building to another was within the same seniority District and that Board has held that an employe can be required to perform service within this Seniority District as needed. Award 3144 (Whiting), Award 3208 (Ferguson), Award 3337 (Bailer), and Award 3458 (Murphy).
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> Also, this Board can find no rule prohibiting the change of address of a Headquarters within a Seniority District and requiring the abolition of all personnel working out of all Headquarters when the address is changed within the Seniority District. The record discloses that the movement of Headquarters involved only a very short distance. There being no contractual agreement prohibiting the movement of Headquarters within a Seniority District and no contractual requirement of rebulletining of jobs for personnel working out of the old Headquarters, none will be implied.

Finally, the Board finds that Rule 14(e) specifically prohibits the discontinuing of established positions, and the creation of new ones under the same or different titles, covering relatively the same class of work, which will have the effect of evading the application of these rules (i.e., including Rule 13(c)).

Although Carrier has maintained that the word "rules" in 14(e) refers only to the other sections of Rule 14, the Board finds otherwise. Rule 14 is one rule, and the plural (i.e., rules) is used in 14(e), which means that this paragraph applies to the other rules as well, namely, in the instant case, to Rule 13. The plural "rules" is the language used by the parties themselves in 14(e), and the Board holds that the contracting parties must be presumed to have known what they were doing when they chose the language which they did to express their bargained intent.

For all of the foregoing reasons, therefore, Part 1 of the Claim is sustained, and Part 2 is modified so that Claimant only receives the difference between the rate of pay for the Mobile Agent's position and his rate of pay for the third trick Telegrapher-Clerk position at White giver Junction. Claimant can recover no more than the loss he has suffered and of which he may rightfully complain. He is not entitled to be enriched.

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 Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.

Serial No. 290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to AWARD 21270

DOCKET NO. CL-21333

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

NAME OF CARRIER: Central Vermont Railway, Inc.

Upon application of the Carrier involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the follow-&R interpretation is made:

Carrier requests an interpretation on when its liability should be ended in connection with Part (2) of the claim, as modified by this Board as follows:

> "Claimant only receives the difference between the rate of pay for the Mobile Agent position and his rate of pay for the third trick Telegrapher-Clerk position at White River Jct. Claimant can recover no more than the loss he has suffered and of which he may rightfully complain. He is not entitled to be enriched."

This Board has no authority to alter, change or modify the extent of an Award under the cloak of an interpretation thereto. Rather, the Board is limited to interpreting an Award in light of the circumstances that existed when the Award was rendered.

Clearly, the first paragraph of page 2 of the Carrier's request for interpretation again reargues the merits of the case, which we cannot consider.

Part (2) of the claim as modified by the Board is valid under the award made from the date of the violation to the date the violation is corrected. A factual controversy regarding the specific date Carrier's liability ends is not in the record before us, and, consequently, this Board does hot have the authority to make this determination. Such determination must be made by the parties themselves.

Referee James C. McBrearty, who sat with the Division, as a neutral member, when Award No. 21270 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.