

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26139
Docket Number CL-26068

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago Union Station Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9941) that:

1. Carrier violated the effective Telegrapher's Schedule Agreement when, commencing August 2, 1983, it unilaterally removed and transferred bridge tending duties of South Branch Bridge to persons other than those employed by the Chicago Union Station Company, thereby permitting and/or requiring said persons to perform work historically, traditionally and exclusively reserved to employees within the scope of our Agreement.

2. Carrier shall now be required to compensate the senior available Operator, extra in preference, for eight hours' pay at the straight time rate if extra, or the time and one-half rate if regularly assigned, of the position of Operator-Clerk, South Branch Bridge, commencing with August 2, 1983 and continuing each and every day thereafter, five days per week, Tuesday through Saturday, that a like violation exists."

OPINION OF BOARD: The instant Claim alleges a violation of the Scope Rule when, on August 1, 1983, the Carrier "relinquished the bridge tending function to Amtrak where it is controlled remotely by an employee of that Company." The Organization maintains that Carrier had entered into a shared Agreement for the operation of the South Branch Bridge between Chicago Union Station (hereafter C.U.S.) and Conrail employees. Under the conditions thereof the work was reserved for the employees and within the Scope of the Agreement.

Carrier argues that the work in question passed from the C.U.S. when Amtrak purchased the property and therefore denies a Scope violation as well as any violation invoked by Appendix C-1 or the Washington Job Protection Agreement. Carrier's defence on merits rests on the fact that the purchase of the bridge by Amtrak ended the employees prior contractual rights involving C.U.S. and the bridge tending duties on the South Branch Bridge.

As a preliminary point, the case at bar is a Scope Rule case and does not require this Board's attention or consideration of either the implied provisions of Appendix C-1 or the Washington Job Protection Agreement which lie beyond this Board's jurisdiction. We will therefore limit resolution to the Organization's letter of August 12, 1983 which stated that:

"...the unilateral removal of this work from employees covered by the scope of our Agreement is a violation thereof. We direct your particular attention to Regulation 1 thereof."

This Board has carefully studied the record, the Agreement, and the Awards which each party has cited. It is clear in the record that control of the South Branch Bridge passed to Amtrak. Whatever rights the employees had vested in their contractual agreement with C.U.S. were no longer governing when the work in question transferred from Carrier's control. The Scope Rule reserves to the employees that work which the Carrier has power to offer. In the instant case the record bears out that the Carrier herein (C.U.S.), does not have the work under its control, did not unilaterally remove it or transfer it. Amtrak purchased the bridge and on the basis of this fact, and consistent with prior Awards, this Board denies the Claim (Third Division Awards 25466, 20639 and 19803).

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 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

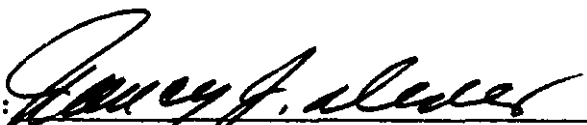
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

LABOR MEMBER'S DISSENT TO
AWARD 26139 - DOCKET CL-26068
(REFEREE M. E. ZUSMAN)

REARGUMENT AUGUST 22, 1986

The Majority Opinion has erred in Its decision as it bases Its denial on the following language:

"...Whatever rights the employes had vested in their contractual agreement with C.U.S. were no longer governing when the work in question transferred from Carrier's control. The Scope Rule reserves to the employes that work which the Carrier has power to offer. In the instant case the record bears out that the Carrier herein (C.U.S.), does not have the work under its control, did not unilaterally remove it or transfer it. Amtrak purchases the bridge. ..."

The Majority has failed to take into consideration the unrefuted fact that the Carrier never owned the South Branch Bridge. The bridge was owned by Conrail, but it was under that ownership that a contract was made between the several Carriers and Its representatives on October 3, 1960, which vested the disputed work involved to such employes. Section 2(a) of the Agreement states:

"First trick Chicago Union Station Company
Operator-Clerk position at South Branch Bridge:

"This assignment will continue to accrue and be filled by an employe of the Chicago Union Station Company."

The Awards relied upon by the Majority depend upon the premise that the Carrier has no control of the work. Such is not the case in this instance since the Carrier was a party to the aforementioned Agreement. One does not have to own the property to have a vested right in control of the work; otherwise, they wouldn't have been parties to the original Agreement. That October 3, 1960 Agreement vested that right to the Carrier and, because of such, they cannot escape their responsibility because they do not own the property in question. When Amtrak purchased the bridge they assumed the former mutual responsibilities made by Conrail, the ICG and Chicago Union Station.

Award 26139 is palpably in error and because of such carries no precedential value.


William R. Miller, Labor Member

September 29, 1986