

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of the senior furloughed employees in the C&S Department beginning March 15, 1984 and continuing until the violation ceases, with a minimum of 16 hours per day seven days per week, account of Carrier violated the Scheduled Agreement when it abolished the bridge jobs at CP 455 on December 15, 1983 and rebulletined the position on March 15, 1984 to B&B Department Employees." Carrier file: SD-2134.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this jurisdiction of work dispute the Brotherhood of Railroad Signalmen (BRS) filed a Claim on March 30, 1984, alleging that Carrier violated its Scope Rule by assigning bridge operation duties at Bridge 454.70, spanning the Chicago River at South Chicago, Illinois (a.k.a. "River Branch Bridge") to employees covered by the Scope Rule of the Conrail/Brotherhood of Maintenance of Way Employees (BMWE) Agreement rather than to employees covered by the Scope Rule of the Conrail/BRS Agreement. As an interested Third Party, the BMWE claims that the bridge operation duties in question rightfully belong to its members under the terms of the BMWE Agreement with Conrail and past practice since 1975.

Proper disposition of the case requires a review of history and practice which is undisputed on the evidentiary record. For years prior to 1975, under Agreements between the two labor organizations and the former Pennsylvania Railroad, the first shift bridge operation positions at River Branch Bridge were staffed by a BMW-represented employee and the second and third shift bridge operation positions at that location were staffed by BRS-represented employees. The first shift BMW position was staffed all year around, but the second and third shift BRS positions routinely were abolished each winter and reestablished the following spring by bulletin under the BRS Agreement.

In Spring 1975, this practice changed when Carrier ceased creating and abolishing the second and third shift positions under the BRS Agreement and began creating and abolishing those second and third shift positions under the BMW Agreement. Thus, since Spring 1975, all of the positions, first, second and third shift, have been filled by BMW-represented employees.

The practice of filling all Bridge Operator positions on River Branch Bridge with BMW-represented employees continued from 1975 to the present day, before and after the negotiation in 1981 between Carrier and the BRS which produced a new Agreement including, among other things, the following language in Rule 1 Scope:

"The following items of work on the former railroad indicated will continue to be performed by employees represented by the Brotherhood of Railroad Signalmen:

* * * * *

Pennsylvania Railroad

Maintenance and repair of the substation and line for 6600 volt power station at Richmond, Indiana;

Operation of movable bridges at Chicago"
(Emphasis supplied)

Notwithstanding the foregoing language, Carrier continued to bulletin and assign all Bridge Operator duties on River Branch Bridge to BMW-represented employees without protest from the BRS, until March 1984. For its part, BMW claims entitlement to the work in question under the above-described practice and express terms of its Scope and Classification of Work Rules in the Agreement between Carrier and BMW:

"SCOPE

These rules shall be the agreement between Consolidated Rail Corporation (excluding Altoona Shops) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of this Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

* * *

RULE 1-SENIORITY CLASSES

The seniority classes and primary duties of each class are:

Bridge and Building Department

* * *

F. Bridge Roster (*):

1. Bridge Operator

Operate bridges.

2. Bridge Tender" (Emphasis added)

It is at once evident that both BRS and BMWE have colorable claims to Bridge Operation duties under their Agreements; the former based upon the specific language of its Scope Rule and the latter upon the general language of its Scope Rule as well as unvarying practice since 1975. At first glance, it appears that Carrier is in the anomalous position of having made a contractual commitment in 1981 to give BRS certain work which BMWE had been performing exclusively since 1975. Carrier pleads that this was a mistake by its negotiators which should warrant its release from the clear contractual obligation to BRS. This Board, however, is not persuaded to that view. Reformation of a contract is a matter for the negotiating table not the arbitration forum.

Proper disposition of this Claim lies not in arbitral dispensation for Carrier but rather in the express language of the savings clause which appears in both the Conrail/BRS Agreement of 1981 and the Conrail/BMWE Agreement of 1982:

"It is understood and agreed in the application of this Scope that any work which is being performed on the property of any former component railroad by employees other than employees covered by this Agreement may continue to be performed by such other employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not covered by this Agreement which is being performed on the property of any former component railroad by employees covered by this Agreement will not be removed from such employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement." (Emphasis added)

It is not disputed that as of the effective date of each of these Agreements, BMW-represented employees not BRS-represented employees were performing all Bridge Operation duties on all three shifts at the Branch River Bridge. Even if, arguendo, the BRS Claim of March 1984, had been filed promptly and in a timely manner in 1981, the above-quoted "freeze-frame" clause preserved the status quo under which BMW-represented employees were entitled to Bridge Operator duties at River Branch Bridge.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.