Award No. 1254
Docket No. CL-1151

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

EMPLOYES' STATEMENT OF CLAIM: "(a) Claim of the System Committee of the Brotherhood that carrier violated the Clerks' Agreement when on May 10, 1938, it abolished position of Roadmaster's Clerk, Brownwood, Texas, daily rate of pay $6.15 and removed the duties of said position out from under the scope and operations of the Clerks' Agreement rules by assignment to employes not covered by said Agreement; and

"(b) Claim that position of Roadmaster's Clerk, Brownwood, Texas, shall now be reestablished, the last regularly assigned incumbent, Mrs. Velma DeBenedetti, returned thereto; and

"(c) Claim that all employes involved in or affected by said violation of rules be compensated in full for any monetary loss resulting from the carrier's actions."

EMPLOYES' STATEMENT OF FACTS: "Brownwood, Texas is a freight terminal point on the main line of the Gulf, Colorado and Santa Fe Railway Company, located approximately 132 miles westward from the Division point, Temple, Texas.

"Two Roadmasters offices have been maintained at Brownwood for many years and have always had a clerk to jointly serve them.

"On March 1, 1937 the G. C. & S. F. acquired the property of the former F. W. & R. G. Railway Company, which extended, roughly, from Birds, Texas to Menard, Texas, crossing the main track of the G. C. & S. F. Railway Company at Brownwood, a total of approximately 212 miles of track. The 212 miles of trackage was added to the territory of the Brownwood Roadmasters but they were relieved of some of their old territory on the G. C. & S. F. The net result was that their territory was increased approximately 100 miles.

"Among the clerical positions taken over with the F. W. & R. G. was one at Brownwood titled Roadmaster-Yardmaster Clerk, the occupant of which devoted approximately four hours per day, or 50% of his time, to the duties of a Roadmaster's clerk. This position was maintained until May 23, 1937, on which date it was abolished. The duties of Roadmaster's Clerk were assigned to Mrs. DeBenedetti, resulting in a substantial increase in her work; the duties of yardmaster's clerk were assigned to clerks in station service.

"One year later Mrs. DeBenedetti's job was abolished because of an alleged lack of work.

'Date Effective and Change.

'Section 15. This agreement shall be effective as of December 1, 1929, and shall continue in effect for two years and thereafter until thirty (30) days' written notice of a desire to change is served by either party on the other.'

"The employes comments concerning this rule are:

'Article XIII, Section 15 stipulates and provides the procedure by which the Agreement may be revised, modified or extended by either party thereto. As stated above, no conferences were held with the duly accredited representatives of the employes prior to the abolishment of this position and no exception has been made with respect to the coverage of the Agreement insofar as the work involved in this dispute is concerned.'

"The fact that no conferences were held with representatives of the Employes prior to abolishment of the position of Roadmasters' Clerk at Brownwood can not in any way be construed as a violation of this rule. There is nothing in that rule, nor in any other rule in the agreement with clerical employes on this property, that requires or contemplates prior consultation with representatives of the Employes before positions are abolished. The purpose of the Employes in referring to lack of prior conferences is not apparent, unless it be for the purpose of creating the impression that the agreement contains a rule requiring prior conferences in connection with abolishment of positions, or that it has been the established practice to hold such conferences, neither of which is a fact. There was nothing connected with the abolishment of the position in controversy that could have any affect upon or be affected by the provisions of Section 15 of Article XIII."

OPINION OF BOARD: The essential facts in this claim are not in dispute. On May 10, 1938, the position identified as Roadmaster's Clerk at Brownwood, Texas was abolished. Some of the work of this position was transferred to Temple, Texas and a part of the work transferred to the two District Roadmasters at Brownwood, Texas. These two Roadmasters are not covered by the current agreement. Controversial contentions run only as to the volume of work transferred to the Roadmaster, and with respect to the right of the carrier to so remove the work arbitrarily. It is admitted that entirely apart from such routine clerical work as these two Roadmasters handled as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them.

In many awards this Board has held that while carriers are free to abolish positions when the majority of the duties do not remain to be performed thereon, it likewise consistently has held that the remaining duties must continue to be performed by employes within the scope of the applicable agreement, and that the remaining work cannot be turned over to employes without the agreement. (See Awards Numbers, 385, 458, 571, 609, 630, 631, 637, 751, 752, 753, 754, 791, 1122, 1209, and 1210.)

As previously stated the two district Roadmasters are not covered by the current agreement and, therefore, the carrier had no right to transfer to them the remaining work previously done by the clerk in question.

The Board holds that the carrier violated the current agreement.

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 carrier violated the agreement.

AWARD

Claims (a, b, c,) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1940.

Dissent to Award No. 1254—Docket No. CL-1151

The decision of the majority is based upon precedent opinion found in certain former awards by this Division, which opinion expressed in those former awards as applicable to the particular circumstances of each of those cases is stated in the abstract in the instant Opinion making it identifiable as a statement of a principle for basis of a decision rather than the terms of the contract between the parties.

The claim was advanced by the Organization and defended by the Carrier on the basis of their respective contentions respecting the interpretation of the Agreement. Our proper and only function is to interpret these rules, and if the Carrier has transgressed them, order correction of such violation as has occurred. We have no power to ignore the agreed rules or to impose upon the Carrier a principle to which it has not agreed and which is not in the rules.

The majority have not attempted to analyze the Agreement and to apply the intent of the parties thus ascertained. In an apparent evasion of the duty to interpret the Agreement, the performance of which duty is the only power of this Board relating to disputes of the character of this case, the principle obviously assumed to be established by precedents is applied. This principle is interjected as the governing rule between a railroad and its employes without even a gesture in the direction of determining whether the A. T. & S. F. Ry. Co. and its employes have agreed thereto.

There are principles which govern; but they flow from the law. These principles not only do not include any such as the majority have found to exist, but are themselves of such a nature as to brand the action of the majority as an unexcused and inexcusable assumption of forbidden power. These principles are simply written in the Railway Labor Act. We will list them:

First: A dispute involving any "change in . . . rules or working conditions" is "not referable" to this Board (Sec. 5).

Second: Our jurisdiction, therefore, is merely to decide disputes "growing out of grievances or out of the interpretation and application of agreements, etc." which the parties have made (Sec. 3, First (i)). Management still has the right and duty to manage, subject only to the restrictions of negotiated rules.

Third: It is a duty of the carrier to exert every reasonable effort to make agreements (Sec. 2, First), but the law does not require agreements to be made, nor dictate the content thereof if made. In consequence, in the labor field a carrier is bound to its employes and restricted in management only

to the extent of restrictions found in the agreements it negotiates. The Act specifically recognizes that all employes are "in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service." Sec. 1, Fifth). Before the negotiation of agreement the carrier was free to do what is in this case challenged; after the negotiation of agreement it was still free to take such action if not restrained therefrom by a negotiated rule.

Fourth: The bargaining units are a carrier and its employes. The agreement encouraged and the agreement made is an agreement between a carrier and its employes. That agreement, and no other, must furnish the basis for any award in a dispute between the parties to it, such as the instant dispute.

The foregoing are the governing principles; and there are no others. These principles direct us to interpret the rules; the majority make no effort to interpret them. These principles require denial of the claim if no rule has been violated; the majority sustain the claim because of a principle which they do not even profess to find in the agreement. In result, the award is beyond the power of this Division to render. The entry of such awards as this will completely destroy the integrity of negotiated agreements. The question may well be asked, Why negotiate an agreement if this Board will refuse to interpret and apply it and instead arrogate to itself the function (as it has in the instant case) of first making a rule and then inflicting penalty because the rule was not applied before we made it?

That the Agreement was not violated is perfectly apparent from the facts of record and the positions of the parties. The arguments of the employes fall of their own weight; and the carrier has exhaustively demonstrated its freedom from any rule violation. There is no need to add to that demonstration.

S/ A. H. JONES
S/ C. C. COOK
S/ R. H. ALLISON
S/ R. F. RAY
S/ C. P. DUGAN