Award No. 3450
Docket No. CL-3528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

TEXAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement beginning July 1, 1946, when it arbitrarily removed three positions of Clerk-Telegrapher-Leverman from the scope and operation of the Clerks' Agreement. Also

(b) Claim that the Carrier be required to restore the positions and that all employes involved in or affected by the Carrier's action be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: On May 25, 1944 a Mediation Wage Agreement was signed between the Carrier and the Organization to become effective March 1, 1944 upon approval of the National Railway Labor Panel. The National Railway Labor Panel approved the wage agreement on July 5, 1944.

On Page 1 of the wage agreement the positions here in dispute are specifically listed by title. Subsequent wage sheets furnished by the Carrier on May 13, 1946 also specifically lists the three positions.

On May 15, 1944 a Mediation Rules Agreement was signed between the Carrier and the Organization to become effective June 1, 1944 upon approval of certain rules by the National Railway Labor Panel. The Rules Agreement, which is still in effect, was approved by the National Railway Labor Panel on May 29, 1944.

In the scope rule of the agreement the three positions here in dispute are specifically named by title.

On June 14, 1946 the Carrier issued Bulletins Nos. 17, 18 and 19 advising that the three positions were "abolished account reduction of force because of cancellations of contract by Southern Pacific Lines for operation of tower and interlocker facilities". Copies of these bulletins with a letter of transmittal were sent to the General Chairman.

Since July 1, 1946 the occupants of the positions involved have been denied the benefits of the Clerks' Agreement and other employes do not now have an opportunity to utilize their seniority rights in obtaining these positions.

the positions of which were enumerated in the then existing agreement, that the only way these positions could be abolished would be by negotiation. **In effect it is stated that having been negotiated into the agreement they would have to be negotiated out. This contention, however, is not sound. It is well settled by a long line of decisions that a carrier is free to abolish a position when the work no longer exists;** on the other hand, it is likewise well settled that where work remains it must be accorded to employes of the class to which the agreement applies. See Awards 385, 386, 367, 368, and 553 of this Division."

Both the scope and seniority rules of our agreement apply only to the work of the Texas City Terminal Railway Company and cannot by any stretch of the imagination extend to the work of another Carrier nor can this Carrier properly be penalized for the assertion of its legal rights by another Carrier.

CONCLUSION: It is claimed that this Carrier arbitrarily removed three positions from the scope and operation of the Clerks' Agreement. "Arbitrary" is defined as "depending on will or discretion". The change in the operation and control of the interlocking tower at Texas City Junction was certainly not made at the will or discretion of this Carrier, hence, there is no basis whatever for the charge that it acted arbitrarily in the matter. The agreement upon which the claim is based is between the Brotherhood and the Texas City Terminal Railway Company and it applies to the work and positions of the Texas City Terminal Railway Company. That is the length and breadth of the scope rule in the agreement. The Carrier has not removed any work or positions of the Texas City Terminal Railway Company from the scope and operation of the Clerks' Agreement. Another Carrier, the Texas and New Orleans Railroad, has exercised its right to take over the control and operation of the interlocking tower at Texas City Junction, and in so doing, the work and positions therein are no longer subject to the agreement between this Carrier and the Clerks' Organization. Such work and positions were contingent upon the right of this Carrier to the control and operation of the interlocking tower, which are defined in the contracts of July 1, 1907 and October 4, 1932, attached as Exhibits 1 and 2.

The claim is made that this Carrier should be required to restore the positions and compensate all employes involved in or affected by the Carrier's action for all losses sustained. The Carrier is obviously in no position to require the T&NO Railroad to restore to it, the control and operation of the interlocking tower. The change in the operation and control of the interlocking tower was not by action of this Carrier; hence, there are none of its employes involved in or affected by the action of this Carrier. There have been no claims made by employes for compensation, nor have any of the employes of this Carrier suffered or sustained any losses as a result of actions of this Carrier. Furthermore, in exercising its right to resume control and operation of the interlocking tower, the Texas and New Orleans Railroad continued in service in the operation of the interlocking tower, the employes that it found there, and by agreement with the Organization representing that class of employes on its railroad, took such action as was calculated to preserve to them, the continuation of their employment at the tower.

The Carrier has shown that it has not violated the Clerks' Agreement; that it has not arbitrarily removed positions from the scope and operation of the agreement; that there are no employes of this Carrier involved in or affected by this Carrier's action, and that none of its employes have, or are in position to claim compensation for losses sustained by virtue of any action this Carrier has taken.

OPINION OF BOARD: This claim charges the positions in question were wrongfully removed from the scope of the agreement made on June 1, 1944. This is the first agreement between these parties.

In 1907, long before the agreement was made, Carrier entered into a contract with two other carriers, one referred to as the Houston Company, for the construction and operation of an interlocking plant for their mutual use and protection. The contract provided the plant was to be operated by

the Houston Company, and "all employes required for the operation of said interlocking tower and plant shall be employed by and under the exclusive control of the Houston Company. . . ."

In 1932, a supplemental contract was made by which the operation of the plant was transferred to Carrier. By its express terms the supplemental contract was subject to termination at the will of the Houston Company. If terminated, the right to operate the plant reverted to the Houston Company.

The Houston Company was succeeded by T&NO.

Carrier was operating the plant under the supplemental contract when it made the agreement with petitioner in 1944. In subsequent wage agreements the positions at the plant, in question here, were expressly included. The agreement has a provision that positions shall not be removed from it except by mutual consent or in accordance with the provisions of the Railway Labor Act.

In 1946 the Carrier's supplemental contract was terminated, and T&NO took over the operation of the plant. Thereupon Carrier abolished each of the positions in question because of reduction of force due to the termination of the contract.

The question is whether Carrier was authorized to abolish the positions in view of its agreement with petitioner. We hold that it had the right to do so.

While it is true that the positions themselves were not in fact abolished but were filled by another carrier, still Carrier's control of the positions and its right to fill them expired with the termination of the supplemental contract. So far as Carrier is affected the work then no longer existed. Upon the termination of the supplemental contract the positions were automatically removed from the agreement because the agreement was subordinate to the contract since it was made after the supplemental contract. Thus Carrier's only authority to bind the positions in question was subject to and limited by the contract, and the agreement must be so understood. T&NO had the lawful authority to resume operation of the plant and, under the original contract, to use its own employes.

This is not a case where Carrier is attempting to remove or farm out work covered in an agreement by some subsequent arrangement with a third party. Consequently, awards under such a situation are not pertinent. Nor is this a case where work has been improperly assigned to one outside the agreement, so awards on that basis do not apply.

Since the work was removed, not by the Carrier, but by another assuming a superior right to control it, the claim must be denied.

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 parties waived oral hearing thereon;

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 Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1947.