Award No. 6937
Docket No. TE-6969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Houston Belt and Terminal Railway, that:

1. Carrier violated terms of the Agreement between the parties hereto, when on the 7th day of November 1953, without mutual agreement, it declared abolished all positions (first, second and third shifts) of telephoner-towermen at Tower 117, located in Houston, Texas.

2. Carrier further violated terms of the Agreement when on the 7th day of November, 1953, and continuing thereafter, it caused and required the Operators on first, second and third shifts at New South Yard (HA) office to assume, undertake and perform all the duties, services and work of the first, second and third shift telephoner-towermen at Tower 117. That such consolidation of positions and in requiring the incumbent of first, second and third shift Operator's position at New South Yard (HA) office to divide his time between performance of the regular duties of his position and duties of the position of telephoner-towermen (Tower 117) resulted in the suspension of work during regular hours on both positions.

3. Carrier shall be required to restore first, second and third shift positions of telephoner-towermen at Tower 117.

4. Carrier be required to compensate S. M. Roberts, H. H. Vinson, W. D. Collier, C. G. Harvey and S. B. Horton, one day's pay for each and every day, they and each of them are prevented, suspended and withheld by Carrier from performing the services and duties of their regular assignments at Tower 117. (Rate of pay to be determined according to that prevailing on November 7, 1953, Tower 117, adjusted according to increases or decreases).

5. Carrier be required to compensate D. L. Smith, D. S. Parsons, J. J. Wetz and E. D. Griffin, for all wages lost as a result of their being deprived of employment due to violative action of Carrier in declaring abolished the first, second and third shift positions at Tower 117, and in consolidating the duties and services of such positions with those of regular positions at New South Yard (HA) office.

6. Carrier be required to compensate each and every named employe for any and all necessary expenses incurred proximately due to its wrongful and violative action.

7. That any and all other employes adversely affected or who may hereafter be deprived of employment by such wrongful action, shall be compensated for any and all wages lost and be reimbursed for any necessary expenses.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Houston Belt and Terminal Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes. The Agreement became effective on September 1, 1946, and provides rules governing rates of pay and working conditions for employes of Carrier, covered therein, and represented for the purpose of collective bargaining by Telegraphers.

This Carrier operates terminal facilities providing yard terminal and switching service for a number of participating line haul carriers entering the city of Houston, Texas. The instant dispute concerns facilities operated by employes covered by the Telegraphers' Agreement in New South Yard. One facility is called Tower 117 and the other "HA" office.

At Tower 117, prior to November 7, 1953, Carrier had, for many years, provided round the clock service. When the Agreement was executed in 1946 the threee positions were classified as towermen, however by Memorandum of Agreement dated May 21, 1951, the three positions were re-classified as telephoner-towermen.

On November 7, 1953, when Carrier declared abolished the three positions held by employes, duly and regularly assigned thereto, the assignments were as follows:

Employe	Assigned Hours	Rate	Assigned Work Days	Assigned Rest Days
. M. Roberts	7 A. M. to 3 P. M.	1.905	Sun., Mon., Tue., Wed., Thurs.	Fri, Sat.
I. H. Vinson	3 P. M. to 11 P. M.	1.905	Tue., Wed., Thurs., Fri., Sat.	Sun., Mon.
V. D. Collier	11 P. M. to 7 A. M.	1.905	Sun., Mon., Thurs., Fri., Sat.	Tue., Wed.
. G. Harvey		1.905	Sun., Mon., Tue., Wed., Sat.	Thurs., Fri.
test Day Relief Position	(3 P. M. to 11 P. M. (11 P. M. to 7 A. M.)) 7 A. M. to 3 P. M.			
. B. Horton	7 A. M. to 3 P. M.	1.905	Fri.	

Each of these employes had been assigned to the work days and rest days of his work week, according to the provisions of the Agreement. He was the owner of the hours of work assigned to him.

The other facility involved is called New South Yard "HA" office. Carrier has, for many years, maintained three positions in this office, providing round the clock service. The positions are each classified as Operator. When Carrier declared the three positions at Tower 117 to be abolished, effective 7 A. M., November 7, 1953, Operators in "HA" office were ordered and required to operate the interlocking plant (Tower 117) in addition to their regular duties as Operator. In this same Order, Management sought unilaterally to re-classify these positions as Operator-Towermen, which was a distinct violation of the rules.

Employes contend that Management violated the Agreement in declaring abolished, and removing the employes assigned thereto, the positions (3) (first shift, second shift, third shift) of telephoner-towerman at Tower 117. Rule 1(b) reading as follows:

clercial work. Therefore, Carrier could not afford to make any such change were it to have the effect of overburdening occupants of remaining positions.

5. While Carrier certainly does not consider that any of the claims enumerated by the employes is sustainable, and Carrier therefore respectfully requests that you deny them entirely, Carrier does wish to call to the attention of the Board the fact that all of its operations are within the terminal limits of Houston and all of its towers and telegraph offices are accessible to regular Houston bus service.

(Exhibits not reproduced.)

OPINION OF BOARD: Without agreement on the part of the duly accredited Employe Representative, Carrier abolished a mutually recognized, wage rated, and classified position of Telephoner-Towermen at Tower 117, a station within the meaning of the collectively bargained Agreement, and combined the duties of the abolished position with unrelated duties of a separately recognized, classified, and wage rated position of another station, to-wit:

Operator—South Yards, "HA"

The result has been to deprive regularly assigned employes, classified as Telephoner-Towermen of a work opportunity in accordance with vested seniority rights and to exact from employes classified as Operator—South Yards "HA" added duties and responsibilities of another classified and wage-rated position of the Agreement, said added duties and responsibilities not having been contemplated by the parties or bargained for at the time of a wage settlement made and now reflected by Rule 22 currently in effect on the property.

Carrier pleads that it made the move in the exercise of sound managerial judgment, cites a decrease in the work-load of the abolished position as the reason, and adds that the Operator-Towermen (the job title Carrier now employs) have discharged their duties without apparent difficulty since the changeover.

The right of a Carrier to assign its work and direct its working forces is absolute save and except for such limitations as it has assumed by the collective Agreement made for and on behalf of its employes and entered into by and between Carrier officers and the duly accredited Employe Representative. The Carrier is confronted with such an Agreement in this case.

Rule 1 (b) is the basic rule at issue. We quote:

> "Positions or work referred to in this agreement belong to the employes covered thereby and no work or position shall be removed from this agreement except by mutual agreement."

Rules couched in the same or similar language in other Agreements on other properties have been the subject of dispute before this Board on different fact situations. This appears, however, to be a case of first impression since the other Awards have to do with attempts on the Carrier's part to take work entirely outside the covering Agreement and place it elsewhere. Also to be remembered is that this Board's Awards, while they provide opportunities for some degree of uniformity in the interpretation of standard rules in effect on many railroads, they are not necessarily binding as precedents. The same or similar rule is known to be applied differently on different properties by mutual consent depending upon a variety of circumstances having to do with the rule's setting, background, adoption, custom, usage, local practices, and Employe Representation.

In the instant case the Carrier holds to the view that the cited language serves as a restraining influence against full exercise by it of management's

rights, only to the extent that it cannot transfer work or positions covered by the Agreement in question outside and beyond the scope of said Agreement. The placement of the disputed rule in the Agreement, so as to make it a part of the Scope Rule, lends weight to the Carrier's viewpoint.

There would be some added support for the Carrier in language used by this Board in Award No. 6697, except that Award, like the others cited, can be distinguished. The rule (1(e)) there provided:

> "Positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

In that case we construed the word "positions" to be synonymous with the words "work" or "duties." We said:

> "Both parties have cited past awards of this Division to the effect that the duties of a position listed or included within a scope rule belong to the Organization negotiating the rule or agreement. (Citing awards.) Hence, having listed the subject position in the scope rule, this Carrier could not, without subsequent rule change, assign the work of the position to a member of any Organization than that of the Clerks.' We are constrained to construe the above-quoted paragraph of Rule 1 (e) as simply a contract expression of such principle." (Underscoring supplied for emphasis.)

We are constantly and painfully aware of the brevity and sparing use of words which mark these Agreements. Accordingly, we are under a duty to regard every word as important to a correct understanding of the rule and each word to be read so as to be given the meaning intended, if possible. Therefore, Award No. 6697 will not be followed here as precedent. To do so would be, among other reasons, to ignore the proposition that the confronting rule deals with positions and work separately while the rule at issue in the cited award says nothing of work and mentions positions only.

When the parties now before us used two words in place of one they have led us to believe that it was purposely done. Had they used one word to the exclusion of the other, their language would have been subject to the interpretation that they were speaking of both "work" and "positions" since the Board has been long committed to the proposition that work is of the essence and a manifestation of the position.

Petitioner's contention is that in negotiating the rule at issue in this docket, it was not only seeking to avoid removal of work from the scope of the Agreement, but was seeking added protection against the Carrier, without further agreement, undertaking to discontinue positions specifically included and written into the Agreement, by removing the work to another location, through the process of assigning the duties to occupants of other positions, and, thereby, changing the classification of the latter positions from that shown in the Agreement.

We are unable to agree with the Petitioner that the language of Rule 1 (b) admits of no other construction. As heretofore indicated, we see some merit to the Carrier's contention that the placement of the rule requires that it be read in conjunction with the Scope Rule. Each of the parties is convincing in its presentation, but one is wrong; and both are bound by that expressed or clearly implied intent which can be found here only by resort to other rules of the Agreement. In such fashion we shall undertake to give full force and effect to the Agreement as a whole. We see no need to turn to any broad, sweeping principles of other awards, nor will it be our purpose here to lay down any new concepts for use in construing other collective agreements. In other words, we have a dispute here that must be settled within the four corners of the Agreement which is before us in this docket.

It is well to say here, also, that a position remaining in the Agreement does not, by that fact alone, impose a duty upon the Carrier to assign a worker to the position if there are no duties remaining to be performed in the normal course of events for which the position was created. What we are alone concerned with in this dispute is whether work organized, classified and paid for as the work of a mutually recognized position which has been negotiated into the Agreement can be transferred to an unrelated position at another station and the first position be abolished without consent of the Employe Representative when the effect thereof is to remove the position from the operation of the Agreement for all practical intents and purposes.

We have before us a basic Agreement consisting of 23 separate but related rules, said Agreement being effective, by its terms, September 1, 1946. In the same booklet are other agreements and memoranda of understanding later negotiated and agreed upon, but we are concerned here with only the basic Agreement covering 15 pages of printed matter. It is difficult to conceive how so much can be covered in so few words until one reads all words in their proper setting.

The Agreement is written in railroad parlance. The conciseness of same and choice of words are both indicative of the care, backed by railroad experience, that has gone into the writing of rules. The Agreement is organized in terms of both work and positions. Its scope (Rule 1) includes and covers work of named positions. A clear intent to protect work and number of positions for performing that work is evidenced by language which identifies positions by name or title under the Scope Rule and in the Wage Scale (Rule 22), and by other rules to which we shall refer and which we shall discuss.

Rule 2 expresses a clear intent that work under the Agreement is to be organized, paid for, and employes classified as to occupation, all in accordance with the Wage Scale. Permissible changes in classification and duties are provided for, subject to express condition, and, among others, is that one having to do with wage rate inequities.

Seniority and promotion (Rule 3) is geared to positions.

Trading of positions on the part of employes without appropriate consent is prohibited (Rule 18).

We come now to a further restriction on the performance of service by employes according to station (Rule 20), which appears particularly significant when read in connection with Rule 22 (Wage Scale).

It is to be noted that positions, 10 in number in the book, and others recognized but not appearing therein, for the obvious reason that the booklet would not be reprinted every time a new position comes into being, are keyed to separate rates of pay. In some instances the title is the same, but a separate position is recognized due to a difference in location. As in the case of Towermen, three separate positions are shown, two of which are paid the same, but despite the identity of name and same rate of pay on two of the positions, it remains a fact, nevertheless, that reason exists for three separate positions in the Wage Scale.

The effect of the Carrier's action, as shown in this docket, has been to combine at one location the position shown as Operator-South Yards "HA," with that identified in the Wage Scale as Towermen, T117, formerly at two separate locations, thereby effectively eliminating or removing the Towerman, T117 position from the Wage Scale and out from under the Agreement, so far as any present need for recognizing the position is concerned, and in the end amounts to a reclassification of the Operator South Yards "HA" position without the needed consent of one party to the Agreement.

To permit of such action leaves one less position for which Rules 1, 2, 3, 18, 20, and 22 were promulgated and against which those rules are intended

to operate. If permitted, without any restraint, to abolish one or more positions contrary to agreement, the classification of service or work as provided for by Rule, and the rates of pay set forth in the Wage Scale, would lose all significance.

Unless the Agreement be warped and emasculated, we are constrained to hold that Petitioner has made a case and is entitled to prevail on its theory that the Agreement has been violated. Accordingly, Claim (1) will be sustained.

Claims (2) and (3) are remanded. The basis for dispute is that the subject matter in controversy is subject to negotiations between the parties to the dispute, and we have here upheld that principle. The Agreement provides machinery for the parties to determine what is in their best interests with regard to leaving the work at its present location at the same or higher rates of pay, or to restore the abolished positions. It would be inconsistent for the Board to hold that existing differences should be the subject of negotiations and at the same time direct a course of action that would relieve either party of a responsibility that has been assumed by agreement.

Claims (4) and (5) will be sustained only to whatever extent required to make named Claimants whole for wage loss, if any, accrued and accruing, and each to be compensated in an amount representing the difference between the amount earned and what each would have earned, pending final settlement of the dispute, and all to be subject to a joint check on the property.

Claims (6) and (7) will be denied on the grounds and for the reasons that the claims as stated are too vague, indefinite and uncertain, thereby making it impossible of ascertainment, on the record before us, as to what is in controversy, and being subject to the further objection that the statement of claim requires findings of fact without supporting proof.

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 Agreement was violated.

AWARD

Claims disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.

DISSENT TO AWARD NO. 6937, DOCKET NO. TE-6969

Here, we find the majority in a serious error by reason of an erroneous premise. Chief reliance for a sustaining award is placed on Rule 1 (b) of the Agreement between the parties, while at the same time admitting that rules couched in the same or similar language have been the subject of disputes before this Board in different fact situations. The erroneous permise is the designating of this case as one of first impression and classifying all previous

awards involving a rule with the same or similar language as having to do with attempts on the Carrier's part to take work entirely outside the covering Agreement and place it elsewhere. Award 6697 involved a similar rule and may not be so classified. In that case the work still remained, as here, under the covering Agreement. Entirely ignored are still other awards involving the same or similar rule wherein is shown the clear intent and purpose of such a rule.

We dissent.

/s/ J. E. Kemp
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ E. T. Horsley