Award No. 10546

Docket No. CL-8862

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1. Carrier violated and continues to violate the rules of the Clerks' Rules Agreement when effective October 29, 1954 it abolished the position of Chauffeur in the Store Department at Cedar Rapids, Iowa and assigned parts of the remaining duties to employes not covered by the Agreement.

2. The work attached to the chauffeur position at Cedar Rapids, Iowa shall be returned, assigned to and performed by the employes covered by the Clerks' Agreement entitled thereto.

3. Carrier shall be required to reimburse employe W. L. Leighty, occupant of the chauffeur position at the time of abolishment, for any and all losses sustained as result of the abolishment of the chauffeur position, retroactive to November 1, 1954.

EMPLOYES' STATEMENT OF FACTS: Prior to October 30, 1954 the Carrier maintained a position in the Store Department at Cedar Rapids, Iowa identified as Position No. 150 — Chauffeur. The occupant of that position was W. L. Leighty, whose seniority date in the Store Department, Seniority District No. 118, is February 12, 1940. Position No. 150 was assigned to work from 7:00 A.M. to 3:00 P.M., Monday through Friday, with Saturday and Sunday as the assigned rest days. The rate of pay was $15.1120 per day.

The duties normally attached to the position and performed by employe Leighty consisted of chauffeur duties in connection with the handling and hauling of material, supplies, etc., for the various departments at Cedar Rapids and Marion, Iowa as well as other incidental Store Department work.

On October 21, 1954 Bulletin No. GSK-301 abolishing Position No. 150 effective at 3:00 P.M. Friday, October 29, 1954 was issued by General Store-

been performed by Car and Locomotive Department employes and is covered by other agreements.

There exists no basis for a sustaining award and the Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 29, 1954 at 3:00 P.M. Claimant W. L. Leighty's Chauffeurs' position — Number 175 — was abolished in the Store Department at Cedar Rapids, Iowa, and some of Claimant's truck driving duties were reportedly assigned to employes not covered by the controlling Agreement dated September 1, 1949.

The Organization in support of its alleged Agreement violation charge cites Rule 1(e) — first and third paragraphs of the effective Agreement — which read as follows:

> "The inclusion of: 'Crane operators, chauffeurs, truck drivers, tractor operators, lift-truck operators and operators of other automotive equipment and their helpers' in Group 2 of Rule 1 (a) is intended to retain for these employes the right to perform the work with these machines that has heretofore been performed by these employes, and does not establish the right to perform such work now covered by other agreements.
>
> "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."

The record in this case is replete with naked allegations, inadmissible evidence and contradictory statements. However, we did assemble the following pertinent facts — which the parties either did not deny or successfully refute:

1. A substantial reduction in the work load and the work force had occurred at Cedar Rapids due to dieselization;

2. In 1939 the first truck at Cedar Rapids was assigned to the Locomotive Department;

3. The Locomotive Department truck performed all the trucking services for all the departments at Cedar Rapids from 1939 to 1943;

4. A Locomotive Department employe or a Car Department employe performed all the trucking services for their respective departments from 1939 to 1943;

5. A truck was not assigned to the Store Department until April 1, 1943;

6. Mr. Edward M. McDonough, a Car Department employe and President of the Cedar Rapids Lodge of the Brotherhood of

Railroad Carmen of America, initially drove the Store Department truck for a period of several months and admittedly performed trucking work for all departments;

7. Mr. W. J. Weldon, a transferee from the Locomotive Department, who became the Store Department Chauffeur late in 1943, stated that he performed only Store Department work during his six-year tenure;

8. The Car Department had its own truck from 1950 to 1953;

9. For many years Car Department employes have used their personal automobiles and also the Locomotive Department truck in connection with their work duties;

10. For many years, when a large truck was needed, Car Department and Locomotive Department employes have borrowed and driven the Store Department truck;

11. Chauffeuring Car Department materials, tools and employes "out on the line" has never been exclusively performed by Store Department employes.

12. Since the Claimant's position was abolished, the Local Storekeeper was the sole employe in that Department.

From the above facts, it is obvious and undeniable that both the Locomotive Department and the Car Department performed their own transportation work prior to the time a truck was assigned to the Store Department. It must then logically follow that such transportation work was protected by the Agreements pertaining to those crafts. Accordingly, it is equally undeniable that the Store Department could not possibly have a claim on such transportation work at that time.

Now let us review the conditions that prevailed after the Store Department acquired a truck on April 1, 1943. Again referring to the above facts, the Store Department truck was initially driven by a Car Department employe for several months and then by Mr. Weldon for approximately six years. The latter stated that "I performed only Store Department work and Car Department employes continued to use the Locomotive Departments' needs." Therefore, it must follow that up until the time in 1949 when the Claimant was assigned to the Store Department as a chauffeur — neither he, nor the position, nor the Organization had any claim whatsoever to the transportation work of other departments.

Did the Store Department subsequently acquire such rights? Did the other crafts subsequently surrender or contract away their transportation work rights to the Organization? Nowhere in the record can we find even a scintilla of evidence that this was done. In fact, we do not believe the Organization ever made such a claim. Consequently, it is extremely difficult for us to understand how — if other crafts had and still supposedly have contractual rights to their respective transportation work — the Petitioner can now lay claim to such work.

Certainly the first paragraph of Rule 1 (e), supra, does not support the Organization's position. In fact, the part of that rule reading — ". . . and does not establish the right to perform such work now covered by other Agreements." — actually and factually bars the Organization from claiming the transportation work involved because such work is covered by other Agreements.

Turning to the Organization's claims against the H. & W. Transfer Company and the Hubbard Ice and Fuel Company, we find the following facts:

1. Since May 1, 1951, the H. & W. Transfer Company has hauled l.c.l. freight and l.c.l. packages to and from the Cedar Rapids Freight House and the Marion Passenger Station; prior to May 1, 1951, this work was performed by the Carrier by using freight cars;

2. The Hubbard Ice & Fuel Company delivered ice purchased by the Carrier to the Carrier's ice storage boxes.

It somewhat strains our understanding to see how the Organization can have any claim to such work activities. The work performed by those Companies, supra, was not work that had issued to, passed to, or been regularly performed by Store Department employes. Consequently, Store Department employes have acquired neither active nor passive rights to that work.

The Organization did not disprove the Carrier's claim that the Local Storekeeper now performs all the remaining work duties of the abolished position.

The Carrier's refusal to join the Organization in a "joint investigation" on the property was not a material consideration in our determination.

Even the Organization's Exhibit "D" — which delineated the Claimant's work duties for a specified period and which the Claimant prepared — gave but scant support to the Organization's claim.

Accordingly, we must deny this claim.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1962.