Award No. 14126
Docket No. TE-13065

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pacific Electric Railway, that:

1. Carrier violated the terms and intent of the parties' Agreement when, on September 1, 1960, it required or permitted C. A. Stein, Agent at Culver City, California, to take yard check at Santa Monica, California and other non-agency stations, in addition to his regular work and duties of Agent at Culver City.

2. Carrier shall now be required to compensate Mr. Stein, or his successor, eight hours at pro rata rate for each day the violation exists, commencing November 24, 1960, in addition to compensation already received.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties hereto, effective August 1, 1955, is by this reference considered in evidence in this dispute.

The issue which brought about the dispute is related in this presentation of the facts. On August 24, 1960, written notice was given to Agent C. A. Stein, occupant of the position so classified at Culver City, California, over the name of D. W. Yeager, Superintendent, as shown in the following:

"Effective September 1, 1960, the duties assigned to your position No. 1 as Agent at Culver City, California, will include checking the yards at Santa Monica, California, and West Los Angeles, California.

Please be governed accordingly."

On September 1, 1960, a second notice, as shown below, was given to Agent Stein:

"Effective September 1, yard check of Santa Monica and West L. A. was added to Position No. 1 at Culver City.

In the interest of economy and reducing of telephone calls, etc., you will arrange, effective the start of business, September 6, 1960,

AWARD 5331 (Robertson)

'Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of **work necessary for its operations** lies within Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interest of efficiency and economy.' (Emphasis ours.)

AWARD 6711 (Donaldson)

'* * * No rule has deprived Management of discretion to plan and apportion work that properly is within an employe's assignment and our Awards do not condemn under such circumstances.'

5. Accordingly, Bureau's action of October 1, 1952 was not violative of the applicable Agreement."

In the appeal of this claim to the Carrier's Manager of Personnel, the General Chairman stated, in part, (Carrier's Exhibit D), "In the instant case the Carrier is requiring the Agent at one location to perform work and duties of an Agent at another location. Hence, Claimant Stein is entitled to one day's pay for each day he is permitted or required to perform work at another location, other than the station he occupies or is entitled to." The Carrier denies generally and specifically that Claimant Stein is or has been performing "work and duties of an Agent at another location" in making the ". . . . yard checks covering the area served by the Santa Monica Agency." (Carrier's Exhibit A). The yard checks covering the area served by the Santa Monica Agency are no longer a part of the work assigned by the Carrier to the Santa Monica Agency but have been a part of the work assigned by the Carrier to the Culver City Agency since September 1, 1960. Such reassignment of work is not restricted by the controlling agreement. Under such circumstances, this Division has held that such action is not violative of the controlling agreement.

It appears to the Carrier that the Organization has proceeded upon the erroneous theory that once an item of work is performed by a particular agency location that such work becomes the exclusive work of that agency and cannot be reassigned within the class and craft. If this be true, then the statement of claim involved herein constitutes a request for a new rule, which this Division does not have the authority to grant.

The only rule in the controlling agreement that even remotely would substantiate a "claim" in an instance of the type herein involved is Rule 17(b) cited by the Carrier under STATEMENT OF FACTS having to do with excessive duties. In the instant case, no complaint has ever been filed by any employe. On the contrary, Carrier received advice from the Claimant that the claim involved in this dispute did not ". . . meet with my approval."

(Exhibits not reproduced.)

OPINION OF BOARD: The point at issue is whether Carrier has the right to require the Culver City, California, agent, the Claimant herein, to perform duties at Santa Monica that formerly were a part of the assignment

of the Santa Monica agent. The two locations are about ten miles apart and within the same seniority district. The Santa Monica position was not abolished and remained in existence after the disputed change took place.

That the assignment of work necessary for Carrier's operations lies within its discretion, except insofar as it has restricted itself by agreement, is elementary. See, among others, Awards 5331 and 12419. Accordingly, Carrier possesses the authority to assign Claimant work in two locations if no rule of the applicable Agreement provides to the contrary.

We are satisfied from our study of the record that neither Articles 1(b), 5(a), 7(b), 9(a), 12 nor any other provision of the Agreement, directly or by reasonable inference, bars Carrier from assigning an employe duties in two locations under the circumstances of the present case. The fact that "location" rather than the plural, "locations," is used in those provisions is not a sufficiently persuasive basis for depriving management of the right to assign an employe work in two locations. Article 1(b) merely defines "station" or "tower" as the "location at which employes perform service" and is without substantive force. Article 5 is the bulletin rule and this Board has had frequent occasion to hold that a job bulletin is simply an advertisement without contractual significance and, more specifically, that management has the right to require an employe to serve in two locations, even if the original bulletin mentions but one location. See, e.g., Awards 12332 and 13201. Article 7(b) is not apposite since the record does not establish that either Claimant or the Santa Monica agent was required to suspend work in order to absorb overtime. See Awards 10950, 11655, 13201 and 13218. The guaranty rule, Article 9, was not violated since Claimant was paid all that he was guaranteed by that provision.

While Article 12 appears at first blush to lend some support to Petitioner's theory, further analysis persuades us that it is not controlling in the present situation. It is concerned with emergency relief service but the work in question is not of an emergency or relief nature and simply was added to an existing position as an integral part of its regular assignment. Claimant is not being required to perform service that is not part of his regular position.

The listing of locations in Addendum No. 1 to the Agreement, which shows the rate of pay for each position is descriptive and does not provide a sound basis, whether considered independently or in connection with the other rules of the Agreement, for preventing Carrier from requiring an employe to perform service in more than one location.

There is no evidence that Claimant can not handle his work at both locations within his regular hours of duty or that he has been unduly harassed in any respect by the additional assignment.

In the light of the foregoing considerations, it is our conclusion that the present claim must be denied.

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

That the parties waived oral hearing;

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;