Award No. 14591
Docket No. TE-11159

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

1. The Carrier violated the parties' agreement when on March 14, 1958, it declared the Agent-Telegraphers' position at Sampsel, Missouri, abolished, without in fact abolishing the work thereof, which was transferred to employes of the Chicago, Burlington and Quincy Railroad at Chillicothe, Missouri.

2. The Carrier shall, because of the violation set forth above, restore the position (work) to the parties' agreement.

3. The Carrier shall, in addition to the foregoing, compensate the senior, idle employe, extra in preference, a day's pay (8 hours) at the rate of the nominally abolished position at Sampsel, for each and every day, commencing March 15, 1958, and so long thereafter as the violation set forth in Item 1 of this claim continues.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

At page 33 of this Agreement (Rule 27, Wage Scale) is, among other positions listed, the position existing at Sampsel, Missouri, on the effective date of the Agreement. The listing reads:

Location	Title	Rate per Hour
Sampsel	AT	$1.79½

The rate of the position has been increased as a result of National Collective bargaining and now stands at $2.19 per hour.

In an agreement between these same parties effective October 16, 1927, (page 30 (Rule 26, Wage Scale), this same position is listed as follows:

Location	Title	Rate per Hour
Sampsel	AT	$ .61

Following the station at Sampsel being closed, the Cooley Gravel Company preferred to have its business, including the billing of cars of sand and gravel, handled at the carrier's station at Chillicothe, Missouri, at which location the Cooley Gravel Company's general offices are located.

It is not necessary for a station employe at Chillicothe, Missouri, to go to Sampsel, Missouri, to handle the business of the Cooley Gravel Company

A copy of the exchange of correspondence between the representatives of the parties in connection with the alleged dispute described in the Employes' ex parte Statement of Claim is attached hereto and made a part hereof, marked Carrier's Exhibit B.

(Exhibits not reproduced.

OPINION OF BOARD: Carrier moves that the Claim be dismissed for failure to name the Claimant. We have held that when the identity of a Claimant is readily ascertainable, the requirement of Section 1 (a) of the Article V of the August 21, 1954 Agreement is satisfied. That test is met in this Claim. Motion to dismiss denied.

Effective March 15, 1958, Carrier abolished the position of agent-telegrapher at Sampsel, Missouri. The work of the position was transferred to employes of the Burlington Railroad at Chillicothe, Missouri, at which location the Carrier herein and the Burlington are parties to a joint operation.

Petitioner alleges that: (1) the work transferred was within the Scope of the collective bargaining agreement between it and Carrier; and (2) the taking away of the work from employes covered by the Agreement violated that instrument.

Carrier says: (1) it had the right to abolish the position; (2) joint operations are common in the industry; (3) although the employes at Chillicothe are employed by the Burlington, they are in effect employes of the Carrier because of Carrier's obligation to contribute a percentage of their wages; (4) the employes to whom the work was assigned at Chillicothe are members of and represented by the same national labor organization as Claimant; (5) the shipper preferred to handle its business at Chillicothe; and (6) it was more economical to have the work performed at Chillicothe.

For the purposes of this case we can presume that Carrier had the right to abolish the position at Sampsel. The issue is directed to what was done with the remaining work of the position.

We find that because the operation at Chillicothe was joint and whether or not there was an employer-employe relationship between Carrier and the employes carried on the Burlington payroll are immaterial in the resolution of the precise issue in this case. Likewise, we find immaterial the fact that the employes belonged to the same national labor organization — the collective bargaining contracts in the railroad industry are entered into on a system basis — not industry-wide. They vary in content and at times, although identically worded, are often interpreted and applied differently on the respective properties. Each agreement is confined to the collective bargaining unit recognized therein.

The shipper's preference and economic factors are no defense to Carrier's contractual obligations memorialized in the collective bargaining agreement.

The precise issue is whether Carrier was contractually barred from transferring work exclusively within the Scope of the Agreement to persons not within the collective bargaining unit of that particular contract. Who the persons may be or their relationship to Carrier is not material.

The heart of the collective bargaining agreement is the work and the right to perform that work vested in the employes in the collective bargaining unit as against the world. The bargain once made may not thereafter be lawfully unilaterally changed by either party.

It is not controverted that some of the work transferred to Chillicothe was work within the Scope of the Agreement before us. Therefore, the employes in the collective bargaining unit were contractually guaranteed the right to perform that work, so long as it remained to be done. In unilaterally withdrawing the work from the collective bargaining unit, Carrier violated the Agreement.

Carrier in its argument has cited our Award No. 13635. We have studied it. We are aware that our Opinion herein is **contra.**

Petitioner's prayer in paragraph 2 of the Claim that we award restoration of the position is beyond our power. We will deny it. But, we will award that the work be assigned to employes covered by the Agreement before us.

Carrier says that the amount of work withdrawn from the collective bargaining unit which was exclusively performed by telegraphers would be for less than eight hours a day. We will award that the senior, idle employe, extra in preference, who would have performed the work absent the violation shall be compensated in the like amount he would have received, pursuant to the Agreement, had he performed the work. This conforms to the make whole principle.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained to the extent prescribed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14591, DOCKET TE-11159

This Award is in error and is based on assumption of facts not in evidence.

Chillicothe is a joint facility handling this Carrier's business since 1918 without complaint, and through many renegotiations of the collective bargaining contract. The major shipper at Sampsel desired to tender its business to this Carrier at Chillicothe. Accordingly, no work remained at Sampsel. These are undisputed facts of record.

This Award penalizes the Carrier for the emergence of a situation over which it had no control. Even if this were not the case, the nature of the work involved was essentially clerical. The record establishes there was no work exclusive to telegraphers being handled at Sampsel. The Award makes an erroneous assumption in this regard not established by Petitioner and controverted throughout the entire record.

This Board has held many times that Petitioner is required to prove a violation of the Scope Rule in this type case by demonstrating an exclusive right to system wide performance of the work in dispute. This was not done here. Therefore, the Board should have summarily denied the Claim.

T. F. Strunck
R. E. Black
P. C. Carter
D. S. Dugan
G. C. White

RESPONSE TO CARRIER MEMBERS' DISSENT TO AWARD 14591, DOCKET TE-11159

The right of dissent remains valuable only when it is exercised with due regard for the facts and constructive criticism of opinion. The dissent here has neither of these redeeming features, and is, therefore, valueless.

The facts are clearly stated in the record, and those essential to a determination of the issue are set out in concise language in the Opinion of Board. The wishes of a shipper cannot vary the terms of a collectively bargained agreement between a carrier and its own employes.

Petitioner proved to the satisfaction of a majority of the Board that the scope rule was violated when the Carrier assigned the remaining work of the abolished position to employes outside the scope of that agreement.

The dissent, therefore, registers only the disagreement of the minority, and serves no other purpose.

J. W. Whitehouse
Labor Member

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