Award No. 14738
Docket No. SG-14128

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Railway Company that:

(a) The Carrier violated the provisions of the current Signalmen's Agreement when it unilaterally abolished the monthly rated Signal Maintainer position at Fremont, Nebraska, Western Seniority District, at close of day's work Friday, October 19, 1962.

(b) Mr. O. T. Carter, the regular assignee on the date position was abolished, be compensated the difference in wages and expenses away from Fremont, Nebraska, until position is restored. [Carrier's File: 79-16A-3]

EMPLOYES' STATEMENT OF FACTS: As indicated by the Statement of Claim, this dispute is based on the Carrier's action of abolishing the Signal Maintainer position at Fremont, Nebraska. We contend that the Carrier could not properly abolish this position **unilaterally**, because the position is specifically designated in Rule 59 (a), and because the characteristics of the territory had previously been agreed to in writing. Carrier asserts that Rule 59(a) does not prohibit the abolishment of this position. In view of this, a basic issue for this tribunal to decide is whether or not the Carrier violated the Signalmen's Agreement, particularly Rule 59 (a), when it **unilaterally** abolished the position in question.

The monthly-rated Signal Maintainer position at Fremont was established years ago, and had been identified as Job No. 37-001. Claimant Carter had been regularly assigned to this position by bulletin, and he was the incumbent thereof when it was abolished.

Under date of October 5, 1962, Carrier issued Bulletin No. 18, abolishing the Fremont Signal Maintainer position effective at close of day's work Friday,

October 19, 1962. The Bulletin is attached hereto as Brotherhood's Exhibit No. 1. The Local Chairman approves bulletins as a rule and his name is shown thereon. However, he did not approve this one.

Under date of October 5, 1962, the Carrier also issued "characteristic sheets" of remaining territories, changes having been made to require remaining positions to absorb the territory that had been maintained by the Fremont position.

The Local Chairman's initial claim, dated October 12, 1962, is Brotherhood's Exhibit No. 2. The Signal Supervisor's denial, dated October 18, 1962, is Brotherhood's Exhibit No. 3.

The Local Chairman then referred this matter to the General Chairman. Brotherhood's Exhibits Nos. 4, 5, 6, 7 and 8 constitute the General Chairman's handling.

As shown by Brotherhood's Exhibits Nos. 2 through 8, this dispute has been handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of June 1, 1951, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Prior to October 19, 1962 the carrier maintained a monthly rated signal maintainer position at Fremont, Nebraska. This position was abolished effective at the close of the day's work Friday, October 19, 1962.

Due to track abandonment in the Fremont territory there had been a total of 115.6 miles of trackage in the territory formerly served by the maintainer discontinued. As a result more maintainers were assigned than were required, the maintainer job formerly assigned at Fremont was abolished, and the remaining territory formerly assigned to this maintainer was divided between the maintainers assigned at Chadron, Nebraska, Norfolk, Nebraska, Irvington, Nebraska and Missouri Valley, Iowa.

Claim has been presented in this case that this position could not be abolished except by agreement with the organization. Claim has been denied.

OPINION OF BOARD: The question involved herein is whether or not the Carrier violated Rule 59 (a) of the Agreement when it unilaterally abolished the Signal Maintainer's position at Fremont, Nebraska.

The undisputed facts were that signal maintainer's job at Fremont, Nebraska was abolished and the remaining territory was apportioned between the maintainers at Chadron, Norfolk, Nebraska, Irvington, Nebraska and Missouri Valley, Iowa.

The Organization's position is that the Carrier was without authority to abolish unilaterally the position in question inasmuch as the position is specifically designated in Rule 59 (a), and because the characteristics of the

territory had previously been agreed to in writing; that when the agreement was negotiated, it was agreed that no portion thereof would be amended, revised or annulled except by mutual agreement in accordance with the clause of the agreement entitled "Agreement-Changes In."

Carrier challenges the right of the Organization to refer to a certain memorandum of agreed characteristics covering, among other maintenance territories, Fremont, Nebraska, for the first time in their initial submission to this Board, when it wasn't raised on the property. We feel that their objection is warranted in view of past rulings of this Board. It is a well established rule that this Board will not consider contentions or charges which were not made during the handling on the property. Therefore, the Agreed to Characteristics of the territory of Fremont, Nebraska cannot be considered by this Board in the determination of this dispute.

The sole issue therefore is whether or not Rule 59 (a) was violated when the position at Fremont was unilaterally abolished by the Carrier.

Rule 59 (a) provides as follows:

"TRAVELING ASSIGNMENTS, MONTHLY RATED EMPLOYES.

59. (a) An employe regularly assigned to perform road work in a district the extent of which is such that the employe does not return to headquarters daily and who may be away from headquarters several days at a time, which may include rest days and holidays, such as, positions now assigned with headquarters at Huron and Fremont, unless materially changed by the permanent assignment of additional signalmen in the district, will be paid on a monthly basis and position classified as a traveling assignment. The monthly rate of such employes effective September 1, 1949 shall be the rate in effect August 31, 1949, reduced by $2.43, which rates are based on 328-1/3 hours per month. These employes shall be assigned one regular rest day per week, Sunday if possible. Overtime rules applicable to other employes coming within the scope of this agreement shall apply to service performed on such assigned rest day. On the sixth day of the work week employes will not be required to perform ordinary maintenance or construction work not heretofore required on Sundays. The straight time hourly rate of these monthly rated employes shall be determined by dividing the monthly rate by 328-1/3. No time will be deducted unless the employe lays off of his own accord, and when made will be on basis of days absent or not available, prorated on basis of calendar days in the month less assigned rest days."

The Organization, in support of its position, has cited Awards 1296, 3686, 5483 and 11368, which set out the general rule that when an agreement lists the positions together with the rates of pay attached to those positions, and then provides that the rates of pay shall continue until changed by certain procedure, the Agreement is violated when the position is abolished with work remaining where the specified procedure is not followed.

However, upon close examination of said awards we find that the Rule herein relied upon by the Organization, namely Rule 59 (a) is different from the rules relied upon in said Awards 1296, 3686 and 5483. In those awards

the Rules relied upon clearly and specifically designated the position, its location and its rate of pay. Further Award 5483 involved a specific provision in the agreement that no rearrangement of sections could be made without agreement of the parties thereto, and can thus be distinguished from this dispute.

Petitioner argues that said Rule 59 (a) does refer to Fremont and therefore said position was negotiated into the agreement and can only be abolished by negotiation. Counteracting this argument, the Carrier replies that the reference to Fremont positions in Rule 59 (a) is purely for information purposes. We must sustain this contention of Carrier that the reference to Fremont, Nebraska is for information purposes and is therefore merely descriptive. Reference to Fremont, Nebraska in Rule 59 (a) does not establish a foundation for prohibiting the Carrier from reassigning the work of said position in question. We conclude that Awards 1296, 3686, 5483, and 11368 can be distinguished from the factual dispute involved herein and therefore are not controlling in the determination of this dispute.

This Board has on numerous occasions held that, absent law or contract prohibition, Carrier has the inherent management prerogative to determine its manpower requirement.

Thus, finding nothing in the agreement either expressly or impliedly, to prohibit the Carrier from abolishing the position in question, we must conclude that the agreement was not violated and the claim will 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;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1966.

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