Award No. 15480
Docket No. TE-12636

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when, on or about December 1, 1959, it purportedly abolished the position of agent-telegrapher at Hartman, Colorado, and thereafter on all subsequent work days, required the agent-telegrapher at Bristol, Colorado, to suspend work on his regular position during regular work hours and perform service at Hartman, Colorado.

2. Carrier shall be required to compensate J. D. Baublits, or his successor, an additional day's pay for each occasion on which he performs service at Hartman, on a day to day basis, until the violations are corrected and to reimburse him for all expenses incurred by reason of the performance of service at other than Bristol, beginning December 1, 1959.

3. Carrier shall be required to compensate G. H. Siefken in the amount of a day's pay at the straight time rate of the Hartman position for each day, Monday through Friday, beginning December 1, 1959, and continuing thereafter on a day-to-day basis until the violations are corrected; and at the overtime rate for all work performed outside the assigned hours of the Hartman position plus all expenses incurred which would not have been sustained or incurred if the Agreement violations had not occurred, beginning December 1, 1959.

4. Carrier shall be required to compensate D. C. Light, in the amount of a day's pay at the straight time rate of the 3:45 P. M. to 11:45 P. M. position at Rocky Ford, Colorado, plus all expenses incurred which would not have been sustained or incurred if the Agreement violations had not occurred, beginning December 1, 1959.

OPINION OF BOARD: An Agent's position was abolished in one of two adjacent stations after Carrier received authorization by the State Public Utilities Commission to so do.

After the abolition of the position, the work of both stations was performed by one agent who worked part of the day at each station.

The Employes contend that the two stations were negotiated into the Agreement as full time station or positions; that Carrier violated the Agreement when it abolished the Agent's position. Employes further contend that Article 1, Section 2 of the Agreement was violated when the remaining agent was required to perform the work of the position abolished.

Employes assert that prior Awards of this Board, between the same Parties, support their position.

Carrier represents that the issue of "dualization" involved in the instant dispute has been resolved by this Board in Award 11294 between the present Parties. In support of its position, it submitted an extensive brief outlining all the prior holdings of this Board dealing with the issues involved herein.

This Board has carefully examined all the cited Awards submitted by both Parties.

Award 556 (Millard) between the present parties in the same factual situation as the instant case, sustained the claimant. This finding was followed by this Board in numerous awards until Award 6944, (Messmore) involving different parties, held contrarily.

In Award 11294 (Moore), between the present parties, the Board distinguished the factual situation in that case from that in Award 556 stating that in Award 556 the Board found that "the work continued to exist" whereas the facts in 11294 revealed that "a substantial portion of the work thereof has disappeared." It held that Awards 6944 (Messmore) and 10950 (Ray) were controlling and denied the claim.

An identical factual situation to the present situation arose in March 1960 between the present parties and was resolved by this Board in Award 15358 (Stark). It held:

> "After carefullly evaluating the decision in Award 6944 it must be concluded that the Board was mistaken when, in Award 11294, it held Award 6944 to be 'controlling.' . . .
>
> It seems clear, then, that the following facts are of critical significance: (1) the action complained of in Award 11294 was virtually identical with that complained of in Award 556; (2) the terms of the Agreement, insofar as they applied to the disputed action, were the same in both cases. Under these circumstances Award 556 was the controlling decision unless it was shown to have been palpably wrong — which was not the case (regardless whether one might agree or disagree with its conclusions). It follows, then, that Award 11294 was erroneous to the extent that it ignored controlling Award 556, and should not be followed.

The facts in the case at hand are virtually identical with those in Award 556. There have been no contractual changes affecting the disputed actions. Consequently, Award 556 should be deemed controlling here. . . ."

The finding must be that in the instant situation the facts are essentially identical with those in Award 15358.

It has been held by this Board in numerous decisions that a prior decision between the same parties on closely similar or identical facts under the same Agreement is controlling and should not be overruled, unless such decision is palpably wrong. See Awards 10911 (Boyd), 14380 (Wolf) and others.

This Board is unable to find that Award 15358 is palpably wrong or that there was palpable error in the findings of that award.

Under these circumstances the Board must conclude that Awards 15358 and 556 are controlling between the present parties and must be followed in the instant situation.

Part 1 of the claim will be sustained.

Parts 2, 3 and 4 of the claim are sustained to the extent that the claimants shall be reimbursed and made whole to the extent of the loss sustained by them resulting from the abolition of the position involved herein.

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 has been violated.

AWARD

1. Part 1 of the claim is sustained.

2. Parts 2, 3 and 4 of the claim are sustained to the extent that the Claimants' J. D. Baublits, G. H. Siefkin and D. C. Light shall be made whole for whatever monetary loss they suffered as a result of the abolition of the agent-telegrapher position at Hartman, Colorado. Each shall be compensated with a sum equal to the difference between what he earned and what he would have earned had the position not been abolished.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1967.

CARRIER MEMBERS' DISSENT TO AWARDS 15480, 15481, 15482
DOCKETS TE-12636, TE-12703, TE-13079

(Referee Kabaker)

What was said in Carrier Members' Dissent to Award 15358 (which the majority followed in the instant cases) applies equally to Awards 15480, 15481 and 15482. We think these awards are ill-founded and we, therefore, dissent.

W. B. Jones
R. A. DeRossett
C. H. Manoogian
J. R. Mathieu
W. M. Roberts

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