Award No. 16438
Docket No. TE-14838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Houston Belt and Terminal Railway, that:

1. Carrier violated Scope Rule 1(A), (B), Rule 2(D), of the Telegraphers' Agreement and Memorandum of Agreement dated November 18, 1958, in lieu of Rule 22 of the current Agreement, when on the 31st day of January, 1963, without mutual agreement, it declared abolished all positions (first, second, third, intra-office swing shifts and one tag-end day shift) of Operator-Towermen at Tower 81, located in Houston, Texas.

2. Carrier further violated Rules 2(C), (D), (E) and Rule 22 of the Agreement when on the 31st day of January, 1963 and continuing thereafter, it caused and required the operators on first, second, third, intra-office swing shifts and tag-end day shift at Tower 117, located in Houston, Texas, to assume, undertake and perform all the duties, service and work of the first, second, third, intra-office swing shifts and tag-end day shift at Tower 81, without mutual agreement or negotiation with the Organization.

3. Carrier shall be required to restore first, second, third, intra-office swing and tag-end day shift positions at Tower 81.

4. Carrier shall be required to compensate J. S. McMahon, G. H. Hill, J. L. Landrenau, C. A. Box and the recipient of the tag-end day shift one day's pay for each and every day, they and each of them are prevented, suspended and withheld by the Carrier from performing the services and duties of their regular assignments at Tower 81 (rates to be determined according to the prevailing rate in effect on January 31, 1963 at Tower 81 and any adjustment according to increases or decreases thereto).

EMPLOYES' STATEMENT OF FACTS: By Agreement dated November 18, 1958, effective January 1, 1959, Tower 81 was placed under the Agreement with the Houston Belt & Terminal Railway Company.

Effective at 3:00 P. M. June 14, 1961, Interlocking 86 was converted into a modern electric plant and its controls put into Tower 85, an interlocking station something less than two miles south of Tower 86 which, in the process, was completely abandoned. This, of course, resulted in the abolishment of 4.2 positions.

Under date of April 12, 1962, the carriers made application to the Interstate Commerce Commission for permission to make a similar change at Tower 81, converting its manual operation into an electric operation and moving its control to Tower 117 — carried as Exhibit C. Then, on June 5, 1962, the ICC post Public Notice BS-A1-No. 15183, copy of which is attached as Exhibit C-1, and the ICC Order, dated June 23, 1962, approving the application, is attached as Exhibit C-2.

As early as May 17, 1961, General Chairman Phillips, in a letter of that date (Exhibit D), was informed of our intentions to close Tower 81 — this was actually prior to the closing of Tower 86.

Actually his predecessor, the late General Chairman Rogers, had been so informed in a letter dated June 29, 1959 (Exhibit E). However, no protest of the matter came until, in a letter dated January 31, 1962 (Exhibit F), General Chairman Phillips, calling attention to earlier correspondence and conversations, protested the closing of Tower 81. This brought a reply from Carrier's President & General Manager Alexander dated February 2, 1962 (Exhibit G). Mr. Phillips' reply of February 7 (Exhibit H) brought a cessation of correspondence until, on January 24, 1963, bulletin notice was posted that effective 3:00 P. M. January 31, 1963 Tower 81 would be taken out of service and its 4.2 positions abolished; this brought a protest from Mr. Phillips dated January 25 (Exhibit I); Mr. Alexander replied February 11, 1963 (Exhibit J).

This brought an acknowledgment from Mr. Phillips dated March 1 (Exhibit K) but in the meantime District Chairman Pratt had filed this claim in a letter dated February 23. Superintendent Reese disallowed it for the reason that he could find no violation of any agreement involved — his letter of declination was dated February 26 (Exhibit M).

After another exchange of letters between Mr. Pratt under date of March 6, 1963 (Exhibit N) and Mr. Reese under date of March 11 (Exhibit O), Mr. Phillips appealed the case to President & General Manager Alexander in a letter dated March 25, 1963 (Exhibit P). Mr. Alexander likewise declined the claim in a letter dated April 25 (Exhibit Q). Conference was held May 13 during which Mr. Alexander continued to decline the claim, as shown in his letter of confirmation dated May 20 (Exhibit R) and then on January 23, 1964, Mr. Leighty wrote your Executive Secretary, with a copy to Mr. Alexander, that he was going to submit the case to your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The question in this dispute is whether Carrier, under the terms of the Agreement, had the right to abolish certain positions without the prior agreement of Petitioner.

After obtaining approval by the Interstate Commerce Commission, Carrier modernized Tower 81 and converted its manual and mechanical equipment

into an all electric operation controlled from Tower 117. All positions previously established at Tower 81 were abolished.

Petitioner contends that the unilateral abolishment of positions was a violation of Rule 1(b) of the Agreement which reads as follows:

> "Positions or work referred to in this agreement belong to the employes, covered thereby and no work or position shall be removed from this agreement except by mutual agreement."

Petitioner further contends that when the position is referred to in the Agreement (Rule 22 — Wage Scale), this fact coupled with the restrictions of Rule 1(b) above prevents Carrier from abolishing that position without agreement by the Petitioner.

Carrier asserts that the necessity of obtaining mutual agreement before a position could be abolished would destroy its right to exercise managerial prerogatives in reducing or abolishing positions.

Without citing authority, it is clear that the right to unilaterally reduce or abolish positions remains with Carrier unless Carrier bargains that right away.

This Board is satisfied that there is nothing in this Agreement requiring prior approval by Petitioner before the Carrier could abolish the positions on Tower 81.

Is is clear that Rule 1(b), part and parcel of the Scope Rule, was intended to prevent work or positions from being assigned to employes of another craft. It in no way restricts Carrier from abolishing the positions at Tower 81. The transfer of the work to Tower 117 did not have the effect of removing work from the scope of the Telegrapher's Agreement. All of the employes were on the same seniority roster and performed the same work. There was no reclassification of a position, and no new position was created.

Petitioner places primary reliance on Award 6937, and strongly urges that it must be followed. We do not agree. In that award the question was stated as follows:

> "What we are **alone concerned with in this dispute is whether work** organized, classified and paid for as the work of a mutually recognized position which has been negotiated in to the Agreement **can be transferred to an unrelated position** at another station and the first position be abolished without consent of the Employes Representative when the effect thereof is to remove the position from the operation of the Agreement for all practical intents and purposes." (Emphasis ours.)

The Referee in Award 6937 in effect found that the action of Carrier amounted "to a reclassification of the Operator South Yards 'H' position without the needed consent of one party to the Agreement."

We are thus not bound by the application of the findings of Award 6937, and accordingly deny the claim in its entirety.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.

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