Award No. 16728
Docket No. TE-15914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement between the parties when, effective January 6, 1965, after completion of work at Basile and Elton, Louisiana, it declared these Agent-Telegrapher positions abolished and then, effective January 7, 1965, without agreement, consolidated said positions under one agent who is required to divide his time during regular tour of duty between these two agency stations resulting in the suspension of work during regular hours on both positions, Monday through Friday, each week, which in essence eliminated the employe at Elton, Louisiana, inasmuch as the Agency position remains as headquarters for both positions at Basile, Louisiana.

2. Carrier shall restore the Agent-Telegrapher positions at Basile and Elton, Louisiana, in accordance with Rules 4 (c), (d), 5, 6, 9, 11 and 38 of the Agreement to their full status prior to this unilateral change. Further, after restoration of such positions in accordance with the quoted Rules Carrier shall refrain from unilateral action against the same unless it is accomplished by Agreement between the parties.

3. Carrier shall compensate Agent-Telegrapher D. C. Willie eight (8) hours' pro rata pay applicable at Elton, Louisiana, as of January 6, 1965 and any subsequent increase by National Agreements beginning January 7, 1965 and continuing thereafter as long as Agent-Telegrapher Willie is withheld from the position at Elton, Louisiana. Additionally, Agent-Telegrapher Willie shall be compensated any and all expenses attributed to Carrier's unilateral and violative action.

4. Carrier shall compensate Agent-Telegrapher R. P. Vidrine eight (8) hours' pro rata rate applicable at Basile, Louisiana, in addition to the amount received due to performing duties on the Agent-Telegrapher position at Elton, Louisiana, in addition to performing duties on position at Basile, Louisiana, beginning January 7, 1965 and continuing thereafter as long as this violative action is permitted.

5. Carrier shall compensate the senior employe who was deprived of work as a result of this violative act and said employe shall be compensated for all monetary losses sustained.

6. In addition to the foregoing Carrier shall pay six percent per annum on all sums due and withheld as a result of this violative action.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the collective bargaining agreement, entered into by the parties hereto, effective March 1, 1952. Union submitted its claim to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by agreement rules and applicable provisions of law. The dispute was discussed in conference between representatives of the parties hereto, on the 12th day of May, 1965.

The controversy arose on the 7th day of January, 1965, when the Carrier, acting unilaterally, and without consulting with the Union, declared the two positions of Agent-telegrapher at Basile, Louisiana, and Elton, Louisiana, to be abolished. Contemporaneous with this action, Carrier advertised or bulletined a new position of joint Agent-telegrapher, to perform service at both stations, with assigned headquarters at Basile.

In establishing the joint Agent-telegrapher position, Carrier established a new hourly wage rate; and, imposed, without an alternative, as a condition of employment, that the successful applicant would be required to use his private automobile, in traveling between the two stations, which are seven miles apart. Carrier stated in the bulletin that mileage for use of the private automobile would be seven cents per mile.

Employes contended in the handling on the property, and now contend before this Honorable Board, that certain provisions of the collective bargaining agreement and the Railway Labor Act were violated. (These provisions are specifically set forth in Rules Relied Upon by Union.) Carrier contended: (1) that its combination of the two stations was authorized by an Order of Louisiana Public Service Commission; and, (2) that the collective agreement did not prohibit the combination of the two positions.

(b) ISSUES

Primarily the issues are:

(1) Did Carrier violate the collective agreement provisions in declaring abolished the position of Agent-telegrapher at Basile, and the position of Agent-telegrapher at Elton, effective January 7, 1965, when the work, services and duties of the two positions remained to be and were performed on and subsequent to this date?

(2) Did Carrier violate the agreement in unilaterally establishing, without consultation and agreement with the Union, a new kind of classification, requiring performance of work, services

separate railroad companies and resulted in an employe of one railroad company performing station work for another railroad company. We refer you to Third Division Award 11294 which is identical to the instant claim and was denied by the Board where it was held:

> 'The first issue to determine is if the Carrier is prohibited by the Agreement from (1) abolishing the position at Alvarado, and (2) requiring the agent at Joshua to perform the service at Joshua and Alvarado.
>
> * * * * *
>
> We find no provision of the Agreement which prohibits the Carrier from establishing a joint agency.'

You have been unable to show any provision of the Telegraphers' Agreement which prohibits the Carrier from establishing a position of Agent-Telegrapher, Basile-Elton. Therefore, in view of the foregoing your claims are without merit or rule support and are hereby declined."

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement with which we are concerned became effective on March 1, 1952. Under its Rule 38, "Rates of Pay and Classification," an Agent-Telegrapher is listed for Basile, Louisiana, and an identical position is listed for Elton, Louisiana.

On January 6, 1965, Carrier unilaterally abolished the two positions and created a new position combining the duties of the two stations.

While Petitioner's brief makes invidious comparison of the new position with each of those formerly existing, there is no showing that such new position was not established in conformity with those rules in the agreement relating to new positions. Our sole question here is: Did the agreement contemplate perpetuation of separate positions at Basile and Elton?

Rule 38 is a rather standard provision which lists location, occupation and basic rate of pay. In no way does it purport to guarantee permanency of the work arrangement then applicable to a given station. To the contrary, specific sections of the agreement anticipate changes dictated by economics: Rule 4 (b), "When new positions are created . . . ," 21 (a), "When an employe's position is abolished . . . ," and 21 (b), "When a position of more than one year's duration is abolished, . . ."

Thus we find no contractual basis for sustaining this claim. Rule 38, standing alone, forms no such basis. See Awards 15601 and awards cited therein. Petitioner cites no other rule which would support its position.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1968.

DISSENT TO AWARD 16728, DOCKET TE-15914

This award not only is erroneous, but is a travesty upon the very purpose for which this Board was created.

The dispute involved extremely complicated interaction of the rights and obligations of the parties concerning which a considerable body of precedential and persuasive material has evolved during the many years of contractual relations between them. The position of the Employes was carefully prepared and well documented. Dismissal of this presentation by a superficial appraisal of it as an "invidious comparison of the new position with each of those formerly existing" reveals, in my opinion, nothing more vividly than the prejudicial bias of its author.

If the author had been inclined to examine the Employes' presentation in depth and objectively he would have been seen that there was no ill will or odious intent contained in it. He would have discovered that the so-called new position was "**not** established in conformity with those rules in the agreement relating to new positions."

Rule 4 of the Agreement contains numerous provisions relating to establishing of new positions. These provisions quite clearly show — to anyone disposed to see — that new positions are to be similar to those in existence at the time the agreement was made. They also show that it was intended and provided that employes occupying those existing positions, or those later entering such positions, should not have imposed upon them less favorable rates of pay or conditions of employment than provided for in the Agreement "except by mutual agreement between the Carrier and the Organization."

It seems to me that if the epithet "invidious" could find a proper place in this case it would apply to the manner in which the Employes' presentation was rejected.

The issue in this case was not simply whether the agreement contemplates "perpetuation of separate positions at Basile and Elton," as stated in the award. The issue was whether the Carrier could unilaterally make basic changes in the traditional concept of a "position" with its attendant rates of pay, rules and working conditions, as established by the Agreement. The Agreement says it cannot. The Railway Labor Act says it cannot. The Referee who made this decision says it can.

The error being apparent, further observation would be superfluous.

J. W. Whitehouse
Labor Member

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 16728, DOCKET TE-15914
(Referee Brown)

It is disappointing to see an Employe Organization attempt to mislead the Board with invective, irrelevant citations and invidious comparisons. It is even more disappointing to see a Member of the Board resort to such tactics in an effort to discredit an obviously correct Award.

A careful reading of the record before us reveals that this case turns on whether the Agreement endowed the abolished positions with perpetuity. The relief sought is that the abolishment of these positions be treated as a complete nullity and that Claimants be allowed compensation on the premise that the positions continue to exist. The Organization's comparisons of the abolished positions with the new position and the accompanying accusations of violation of the law are irrelevant, offensive, invidious.

Following the pattern set by the Organization in the record, the dissenter cites no rule that purports in any way to restrict Carrier from abolishing the two positions. Ignoring the real issue, he resorts to invective, to misrepresentations and invidious discussion.

The record establishes that the author of this Award went directly to the issue presented to the Board and correctly resolved that issue in accordance with all applicable Agreement provisions.

The record also establishes that Carrier meticulously accorded the Employes all rights reserved to them by the Agreement, and the real objective of the Employes in prosecuting this claim apparently was to improperly expand their agreement by administrative fiat instead of through the lawful means of collective bargaining.

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