Award No. 17026
Docket No. TE-15584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the New York, New Haven and Hartford Railroad, that:

The terms of the Agreement between the parties have been violated when, effective February 24, 1964, Carrier arbitrarily required the agent, Mansfield, Massachusetts, to divide his time between the signal station and the agency position during his regular tour of duty, and further,

The terms of the Agreement were violated when the position of signal station operator, Mansfield, Massachusetts, was denied a meal period, commencing February 24, 1964, and

Mr. P. Goudreau, agent, Mansfield, Massachusetts, shall be paid the equivalent of 8 hours (one day) for each day, commencing February 24, 1964, that he is required to perform service as signal station operator, Mansfield, Massachusetts, in addition to his regular assignment, continuing on a day to day basis, until condition corrected, and

Mr. C. E. Shelburne, signal station operator, Mansfield, Massachusetts, shall be compensated the equivalent of one hour pro rata, each day denied a meal period of his position, continuing until the condition corrected.

For each day of work denied, Mr. G. Benard, or other available extra employe, shall be compensated the equivalent of one day (8 hours) at pro rata rate each and every day until the condition corrected to accord with terms of the Agreement.

EMPLOYES' STATEMENT OF FACTS: The earliest Agreement between the parties bearing a wage scale is dated June 29, 1907. Said wage scale shows a listing of around-the-clock positions at Mansfield Tower, two

Conference on this grievance was held on June 4, 1964, and under date of June 11, 1964, final decision was rendered. This decision is attached and marked as Carrier's Exhibit E.

Copy of the Agreement between the parties is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The wage scale of the Agreement applicable to this dispute, dated September 1, 1949, shows at the location, Mansfield, one monthly rated Agent and three hourly rated S. S. Operators. Between 1949 and the latter part of 1961, two of the Signal Station Operator positions were abolished. The remaining Operator, assigned to the Mansfield Tower, handled all the train movements within and through the interlocking and performed communications services in connection with the movement of trains. In a separate station and freight office building, the Agent performed the customary duties of an Agent. The Operator did not perform any of the Agent's duties, and the Agent did not perform any of the Operator's duties.

For some time before February 24, 1964, occasional emergency service and, because of increasing business, frequent late arrival of freight train BX-29, required services at Mansfield Tower outside the regularly scheduled hours of the Operator assigned there, and until February 24, 1964, he worked overtime to cover this additional service. Effective on February 24, 1964, Carrier unilaterally changed the hours of the Operator from 8:00 A. M. to 5:00 P. M. (with an hour off for a meal) to 9:30 A. M. to 5:30 P. M. with no time off for a meal; simultaneously, the Agent was unilaterally reclassified to Agent-Operator to work 6:30 A. M. to 2:30 P. M., and required to cover such service as might be necessary at the tower outside the new regular hours of the Operator; the Agent-Operator remained a monthly rated position with no change in rate of pay.

The effect of these changes was that the Agent-Operator performed within his maximum straight time hours as a monthly rated man the work formerly performed by the Operator on overtime; and, on the basis contended by the Carrier that the tower had become a two shift operation, the meal period was eliminated.

The Employes contend that Carrier violated the Agreement in changing the position of Agent to Agent-Operator with duties divided between the tower and the freight station; and that the Operator was denied a meal period, in violation of the Agreement. The validity of the first part of the claim turns on whether Carrier had the right under the Agreement and under the circumstances involved unilaterally to change the classification and duties of the Agent as it did; if Carrier had that right, all other contentions of Employes with regard to the matter fail.

Carrier argues that its right to make the change it made in the Agent position is nowhere restricted in the Agreement, and is positively recognized in Articles 2 (b) and 15 (h), and its right to change the starting times is set forth in Article 5 (a); and that Cases Nos. 14 and 27 of Special Board of Adjustment No. 306 (Referee Whiting) between the same parties, support Carrier's contention here.

Employes argue that Awards 434, 5507 and 6869, between the same parties, support its contention that Carrier did not have the right without negotiation with Employes to make the change. Employes also refer to Article 2 (a).

"ARTICLE 2.

BASIS OF PAY, CLASSIFICATION, NEW POSITIONS, INC.

* * * * *

(a) All employes herein specified shall be paid on the hourly basis, except as to those employes on monthly rated positions so shown in the wage scale.

(b) Where existing payroll classification does not conform to the scope of this Agreement, employes performing service in the classes specified therein shall be classified in accordance therewith."

"ARTICLE 15.

FILLING VACANCIES — BULLETINS, ETC.

(h) When position of non-telegrapher or non-telephoner-agent is changed to require telegraph or telephone service, the agent may, if qualified, or if he passes the required examinations, continue as agent-telegrapher or agent-telephoner."

On its face, Article 15 (h) does not, as claimed by Carrier, establish its right unilaterally to change a non-telegrapher position to one including a requirement of telegraph service — it merely recognizes that under some unspecified circumstances such a change may take place, and establishes a right for the agent when such a change takes place. Article 2 (b) does not clearly apply to circumstances where Carrier changes the service required of an employe so that it no longer conforms to the classification that employe occupies; it appears on its face to be intended to cover cases where the payroll classification does not conform to the positions in the scope rule. However, we need not deal with these questions definitively; unless Employes show that some provision of the Agreement is violated by Carrier's action, Carrier has the right to make changes efficiently to meet the needs of the service.

According to Employes, Section 2 (a) was violated; Employes say:

"When the Agent is assigned to the hourly rated Operator's position, he is no longer an employe on a monthly rated position."

But assigning a monthly rated employe some of the same duties which are performed by an hourly rated employe is not the same as assigning him "to the hourly rated Operator's position"; and we have been shown nothing in the Agreement which prevents the assignment of some of the same duties to both hourly and monthly rated employes. In support of its rebuttal of this contention of Employes, Carrier cites our Award No. 13696 (Wolf) between the same parties, in which one of the complaints of Employes was that a monthly rated Agent had not been called to perform duties which were also part of an hourly rated position; in that case we found that the monthly

rated employe was entitled to be called for the work on some occasions when he was not, but that he was entitled to overtime only on the basis of exceeding the maximum of his regular monthly hours, and not on the basis that while he performed the duties common to those of the hourly rated position, he should be paid overtime as if he were an hourly rated employe.

The doctrine followed in Awards 434 and 5507, relied on by Employes, is stated in Award 5507:

> "In our Award No. 434, between the same parties, we held that to eliminate or combine positions, which have been negotiated into the agreement, the Carrier is obligated to follow the procedures established by the rules for the modification of the agreement, except when such action is due to the elimination of the work and duties for which the position was created, **or to a change in service required since the position was negotiated into the agreement.**" (Emphasis ours.)

Carrier's argument, basically, is that it established the combination position Agent-Operator to meet the needs of a change in the service required at Mansfield, resulting from an increase in business which necessitated either using the Operator on overtime or making the change which was in fact made. Carrier's Superintendent wrote in response to the claim as originally filed:

> ". . . What happened here is that an operating problem arose which required payment of overtime or the rearrangement of force to meet the condition. . . ."

Employes' arguments that there was no change in the service required are shown in its Submission and Rebuttal to be based on the assumption that the only kind of change intended in the foregoing citation is a **decrease** in service needs. In Employes' Submission we find:

> "The point of significance here, as the record shows, is that there was no change in the services required at Mansfield Tower.
>
> The need for the services of an Operator remained as great after February 24, 1964, as before. . . ." (Emphasis ours.)

and in Employes' Rebuttal:

> "It is to be noted in Case No. 14 that the Board attributed the basis for its findings to two aspects; that there was in evidence a condition of declining business and work requirements (which is not so in the instant case where, as Carrier admits, there was in increase in business); . . ."

and

> "In the dispute under Case No. 27, the Board endorsed the Carrier's action because 'there is evidence of a very substantial change in the service required (due) to the elimination of all passenger service and all work connected therewith.' Quite the opposite is true in our case at bar, which Carrier is frank to admit."

and

> "Carrier also points to Award 10950 (Ray), which is not a comparable case to ours, and the Opinion of the Board starts with these six words, 'Due to declining business and revenue . . .' **In our case the change was made due to an increase in business and revenue.**" (Emphasis ours.)

It is our opinion that the "change in service required" in the cited awards referred to any significant change in service requirements, upward or downward, since the positions in question were negotiated into the Agreement. The record establishes that subsequent to September 1, 1949, the date of the Agreement, and after downward changes leading to the abolishment of two operator positions at the location, such an upward change in requirements of the service did take place.

While each of the cases cited is distinguishable from the instant case in that each involved abolishments and/or combinations of positions resulting from declining needs of the service, the underlying principle that, unless barred by some provision of the Agreement, Carrier may make changes, including abolishment and combining of positions, to meet the needs of the service, is as applicable in this case as in those; Employes have not shown any provision of the Agreement barring the exercise of this right in this case.

Since Employes did not show that Carrier improperly changed the Agent to Agent-Operator with the added duty of covering Mansfield Tower as required, we must accept that change as proper, and conclude that when he covered Mansfield Tower, during the regular hours of his prior Agent position or at other times, he was not suspending work during his regular hours nor was he absorbing overtime belonging to the Operator: he was performing duties which belonged to his new position as well as to the Operator's; thus, we find no violation of Article 9 as charged by Employes.

In its Rebuttal, Employes concede Carrier's argument that:

> "If . . . the agent-operator in this case can properly be assigned to work both at the station and at the tower, then there is more than one employe employed at the tower, and the operator at that point may be required to work a straight eight hours without interruption for a meal period . . ."

Since we have found that the assignment was proper, we are constrained to accept this concession and to find that the Claimant Operator was not improperly denied a meal period.

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 did not violate the Agreement as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1969.

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