

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19366
Docket Number CL-17345

Paul C. Dugan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(New York Central Railroad - Southern District

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6340)
that:

(1) Carrier violated the rules of the current Clerks' Agreement when on July 31, 1966, it abolished claimant's position No. 53, Terminal Crew Dispatcher-Crew Caller, Springfield, Ohio, and transferred part of the duties of the abolished position to Sharon Yards, Ohio, and assigned part of the duties to the Terminal Foreman, Yard Masters and others not covered by the Clerks' Agreement.

(2) Carrier shall now be required to compensate Mr. W. S. Delong, former incumbent of Terminal Crew Dispatcher-Crew Caller, Position No. 53, rate of pay, \$23.99 (plus all subsequent general wage increases) for Monday, August 1, 1966, and the same for each and every day thereafter, Monday through Friday of each week until the Agreement has been complied with.

OPINION OF BOARD: Claimant, as the regularly assigned Terminal Crew Dispatcher-Crew Caller at Springfield, Ohio was required to dispatch and call train and engine crews, maintain records, make reports, and perform other duties in connection with said position.

In 1960, Carrier abolished this position and assigned the duties of the position to others not covered by the Clerks' Agreement. Claims were filed and conferences held between the Organization and Carrier. By agreement dated May 15, 1961, in the form of a letter from Carrier's General Manager, W. B. Salter, to the Organization's General Chairman, J. J. Keuper, the Organization withdrew its claims and effective June 1, 1961 Carrier established the positions of "terminal crew dispatcher-crew caller" in Springfield, Ohio in lieu of the "engine dispatcher" positions, with such positions to do all the necessary calling.

On July 21, 1966, Carrier unilaterally abolished this Position No. 53, effective July 31, 1966. On July 28, 1966, Carrier instructed the Springfield crews that they would be called by the Sharon Engine Dispatcher, using the Circle Cab Company of Springfield, Ohio to assist the Engine Dispatcher in calling engineers and firemen who do not have a telephone and who live within the mile and one-half calling distance.

The Organization contends that the Carrier unilaterally transferred the Claimant's work from Springfield to Sharon Yards, Ohio and to cab drivers at Springfield, Ohio in violation of the May 15, 1961 letter agreement.

Claimant, by letter dated August 1, 1966, to Carrier's freight agent, G. T. Steele, at Springfield, Ohio, made claim, and the letter states that the February 7, 1965 agreement has been violated, particularly Article III, Section 1, of that agreement, requiring an Implementing Agreement whenever the proposed change would not have been permissible, prior to February 7, 1965, without conference and agreement; that the agreement in effect prior to February 7, 1965 was dated May 23, 1962 and required Carrier to enter into an agreement before transferring any work of employees. Claimant goes on to state that he was not given proper notice for which his job No. 53 was abolished and that the transferring of work from Springfield, Ohio to Sharon Yard was not by agreement.

The Organization is contending that Carrier in transferring the work in dispute to employees not covered by the Clerks' Agreement violated the Scope Rule of the agreement, Rule 1; Rule 11 - Consolidation; and Memorandum of Agreement dated May 23, 1962; February 7, 1965 Stabilization Agreement - Article II Section 1, and interpretations thereof, in particular Item 1(b).

Carrier's position is that the February 7, 1965 Stabilization Agreement supersedes the May 23, 1962 System Mediation Agreement and is therefore the governing agreement in this dispute; that the proper forum for handling disputes under the February 7, 1965 agreement is the Disputes Committee and therefore this Board lacks jurisdiction in deciding this dispute.

Carrier further contends that if this Board does accept jurisdiction of the claim, the claim is without merit because the Scope Rule of the Agreement does not grant to Claimant the exclusive right to perform the work in question; that while Claimant was a protected employee under the February 7, 1965 Stabilization Agreement at the time his position was abolished, he lost his protection to this job by filing this claim, by claiming a job to which he was not entitled and by not claiming a job to which his seniority did entitle him.

In regard to Carrier's contention that this claim must be decided by the Disputes Committee under Article VII of the February 7, 1965 Stabilization Agreement, we find that the Organization, on the property and in its ex parte submission, relies on the February 7, 1965 Stabilization Agreement and the interpretations adopted November 24, 1965 as authority for this claim that the Carrier cannot abolish Claimant's position at Springfield, Ohio without prior negotiation and agreement with the Organization.

While it is true that the stated claim also involves claimed violations of the Clerks' Agreement unrelated to the February 7, 1965 Stabilization Agreement, and although in oral argument before this Board the Organization member, this Board vigorously argued that Carrier cannot rely on the February 7, 1965

agreement because Carrier did not comply with said agreement due to failure to give the required notice under said agreement, we find that there are genuine issues in regard to the application and interpretation of the February 7, 1965 agreement that must be decided in the proper disposition of this claim and that the proper tribunal for those issues is the Disputes Committee authorized by Article VII of the February 7, 1965 Stabilization Agreement. See our Award No. 18925 and Award No. 18602.

The Organization has referred to this Board our Award No. 18416 wherein the Board pointed out that the reference of the claim to the Disputes Committee was not mandatory under Article VII of the February 7, 1965 Stabilization Agreement. However, in that award the claim was decided on the issues independent of the February 7, 1965 agreement. The present claim cannot be so decided and therefore our Award No. 18416 can be distinguished and therefore is not controlling in this dispute. We will therefore dismiss the claim without prejudice.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Claim be dismissed without prejudice.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.