NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19518
Docket Number MW-19267

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Pennsylvania-Reading Seashore Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it discontinued the use of drawbridge tenders at Atlantic City and assigned drawbridge tender's work at that point to Block Operators who do not hold any seniority in the M. of W. Agreement.

(2) Drawbridge Tender's work at Atlantic City be returned to drawbridge tenders holding seniority as such within the M. of W. Agreement.

(3-a) Drawbridge Tender N. H. Thomas be allowed eight (8) hours' pay at his straight time rate, three (3) hours' travel time and a mileage allowance of ten (10) cents per mile for 124 miles per day for each of the following dates - November 20, 21, 22, 23, 24, 27, 28 and 29, 1966.

-b) Drawbridge Tender F. J. Vispo be allowed eight (8) hours' pay at his straight time rate, one (1) hour and forty (40) minutes of travel time and a mileage allowance of ten (10) cents per mile for 43 miles per day on each of the following dates - November 21, 22, 23, 25, 28 and 29, 1966.

-c) Drawbridge Tender Donald T. Christopher be allowed eight (8) hours' pay at his straight time rate, three (3) hours' traveling time and a mileage allowance of ten (10) cents per mile for 100 miles per day for each of the following dates - November 19, 22, 23, 25, 26 and 29, 1966.

OPINION OF BOARD: This is a Scope claim arising under Agreement between the parties, effective April 1, 1946.

Third party notice has been given to Transportation-Communication Division, BRAC.

FACTS

Prior to 1934 the drawbridge at Atlantic City was operated by Telegraph Department employees (Block Operators). In 1934 the New Atlantic Interlocking was placed in service and the electric locking of the drawbridge and signals, which had been controlled from the drawbridge by Block Operators, were placed under the control of the Atlantic Block Station located some distance

from the drawbridge. The work of operating the drawbridge was assigned to and performed by Maintenance of Way Drawbridge Tenders; they continued to operate the drawbridge during two revisions of the Agreement, one in 1940 and one in 1946 which is the current Agreement.

Between 1964 and 1966 the Carrier made extensive changes in its physical plant at Atlantic City, including the relocation of the Atlantic City Block Station on the Atlantic City Drawbridge. This had no effect on the operation of the bridge, and the open and close controls of the bridge remained in the control house which is also located on the bridge.

On November 18, 1966 the three Maintenance of Way Drawbridge Tender positions at Atlantic City were abolished, and thereafter the work of operating the bridge was assigned to and performed by Block Station Operators who are covered by the Telegraphers' Agreement.

In its submission Carrier stated the Atlantic City changes were made because of highway construction and a drastic diminution in business and traffic over the years. After the relocation of Atlantic City Block Station on the drawbridge, Carrier was of the opinion there was no longer sufficient work for both a Block Operator and a Drawbridge Tender; hence, it reverted to the original complement by abolishing the position of Drawbridge Tender and having the Block Operator absorb the amount of work involving the operation of the drawbridge which remained.

As a result of the displacement process, caused by the exercise of seniority following the abolishment of the positions, the claimants displaced into positions involving greater travel time and mileage than had been the case in their original positions.

In 1943 Carrier had five drawbridges--all of which were operated by Maintenance of Way Drawbridge Tenders. In May 1943 the new "Canal" drawbridge was placed in service near Cape May, New Jersey, and its operation was assigned to Maintenance of Way Drawbridge Tenders.

By letter dated July 24, 1943, the Order of Railroad Telegraphers made formal request for the Canal drawbridge positions on the ground that such positions "require the use of slow releases, are interlocked and control the lock of the switch leading to Cape May Harbor." On May 12, 1944 the Carrier granted the Telegraphers' request.

In 1950 certain changes separated the operation of the Canal drawbridge from the operation of any interlocking facilities or signals. In 1953 the Maintenance of Way Employees requested the Canal positions, were denied, and took no further action. In 1958 the request was again made and referred to the Pennsylvan. Railroad-Pennsylvania-Reading Seashore Lines-Brotherhood of Maintenance of Way System Board of Adjustment and handled in Docket No. 602.

In denying the Maintenance of Way request for Canal in Docket No. 602, September 7, 1961, Referee Cluster, inter alia, stated:

> "It appears that the position of Drawbridge Operator has been listed in the Scope Rule of the Maintenance of Way Agreement during the entire period that the Canal Drawbridge has been in operation. It also appears that at least since January 1, 1945 the rate schedule of the Agreement between the Carrier and the O.R.T. has listed the position of Block Operator at Canal Drawbridge, with the following notation: 'Operates Drawbridge'.
>
> In order for the Brotherhood to prevail, it must be established that the present duties of the employees operating the Canal Drawbridge have been recognized on this property as belonging exclusively to Maintenance of Way employees under their Agreement. The Block Operators have been operating this drawbridge since 1944, and during that time they have operated it for as many years without the incidental interlocking plant and signalling duties as they have with such duties. No claim to the work was made by the Brotherhood until some three years after the interlocking and signalling work had been discontinued, and at that time the claim was not progressed beyond an initial denial. Thereafter, five more years passed before the filing of the present claim in 1958. Under these circumstances, we are unable to find that the work of operating Canal Drawbridge is exclusively vested in Drawbridge Operators under the scope rule of the Maintenance of Way Agreement, and accordingly must deny the claim."

PERTINENT RULES

Petitioner submits that the controlling rules are the Scope Rule, Rule 1-A-1 and Rule 3-A-1 which read as follows:

> "SCOPE
>
> These Rules subject to the exceptions hereinafter set forth, shall constitute an Agreement between Pennsylvania-Reading Seashore Lines and its employes, of the classifications herein set forth-engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repairs and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed.
>
> * * * * * * *
>
> Drawbridge Operator
> Drawbridge Tender

"EXCEPTIONS

This Agreement does not apply to the following employes in the Maintenance of Way Department:

(a) Employes of the Pennsylvania-Reading Seashore Lines covered by the 'Schedule of Regulations for the Government of Clerical and Miscellaneous Forces' employes under the jurisdiction of Superintendent-Effective October 18, 1933.'

(b) Employes of the Pennsylvania-Reading Seashore Lines covered by the 'Regulations and Rates of Pay for the Government of Telegraph and Signal Department Employes Classified Herein-Effective January 1, 1934.'

These rules shall apply to all positions, classifications or work in the Maintenance of Way Department, irrespective of supervisory jurisdiction, for which rates of pay have been established or may be stablished by agreement between the Management and the Brotherhood of Maintenance of Way Employes. Before work covered by this Agreement is contracted, the General Manager will confer with the General Chairman, except in emergencies. 'Emergencies' as that term is used herein applies to fires, floods, heavy snow and like circumstances."

"RULE NO. 1-QUALIFICATIONS FOR ASSIGNMENT

I-A-I. In the assignment of employes to positions under this Agreement, qualifications being sufficient, seniority shall govern.

The word 'seniority' as used in this Rule (I-A-I) means, first seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority roster."

"RULE NO. 3 - SENIORITY

3-A-I. Seniority begins at the time the employe's pay starts. An employe assigned to a position of higher class than laborer will begin to earn seniority in such higher class and lower classes on the same seniority roster in which he has not previously acquired seniority from the date first awarded an advertised position in such higher class. He will retain and accumulate seniority in the lower class from which assigned. An employe entering service in a class above that of laborer or trackman will acquire seniority in that class from the date assigned to an advertised position and will establish seniority as of the same date in all lower classes on the same seniority roster.

This Rule became effective July 1, 1940, and does not change seniority rank established prior thereto."

Carrier submits the claim for travel time is controlled by Rule 4-K-1(e) which reads as follows:

> "(e) An employe will not be allowed time while traveling in the exercise of seniority or between his home and designated assembling points, or for other personal reasons."

CONTENTIONS OF PARTIES

Essentially Petitioner contends that the instant Scope Rule is not general in nature and that the disputed work was negotiated into the Agreement.

Carrier contends the rule is a general one, and, consequently, the Petitioner must prove exclusivity on a system-wide basis which it cannot do because of the disposition of the Canal dispute.

RESOLUTION

Petitioner contends that the instant Scope Rule is not a general one, because the exceptions thereto are clearly set forth and no others can be implied. Also that the language used in the Rule is such as to make it not a general type rule.

We have studied the Rule and pertinent awards carefully; however, we must conclude that there is no major difference between the herein Rule and rules which the Board has treated as general scope rules in previous awards. We note, for example, that the herein Rule speaks of the Agreement between Carrier and classifications of employees "engaged in work generally recognized as Maintenance of Way work". This kind of language was before the Board in Award 11526 (Dolnick), wherein it was contended by Employes that the work of repairing meters "is generally recognized signal work". In denying the claim this Board stated:

> "It is a well established principle of this Division, that where there is no express reference to the work in the Scope Rule, that the intent of the parties can be only ascertained by past practice, custom and usage on the property.
>
> * * * * *
>
> The Agreement between the parties is system-wide..... the work belongs to them only if by practice, custom and usage of on the property, work has been done system-wide exclusively by Signalman."

Though a different Agreement and craft is involved here, the language which the Board had before it in Award 11526 is not substantially different from the language in the instant Scope Rule. Accordingly, we find the herein Rule to be general in nature and that Petitioner has the burden of proving that Maintenance of Way employees have exclusively performed the disputed work on a system-wide basis.

In 1950 changes occurred at Canal drawbridge which separated the operation of the drawbridge from the operation of any interlocking facilities or signals. After these changes Block Operators continued to perform the work of operating the interlocking facilities or signals and also the work of operating the drawbridge. When Maintenance of Way employees requested the Canal positions in 1953, the request was denied. When the request was submitted to the System Board of Adjustment in 1958, the dispute was resolved in favor of the Block Operators in Decision 602.

In view of the operation of Canal drawbridge by Block Operators, Petitioner has not carried the burden of proving exclusive performance of the disputed work on a system-wide basis. We shall therefore deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.