

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19723
Docket Number TE-18980

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication Division, BRAC)

PARTIES TO DISPUTE: (

(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Denver & Rio Grande Western Railroad Company, T-C 5760, that:

1. Carrier violated the Telegraphers' Agreement when, effective May 1, 1969, it abolished the positions of first, second, third and relief telegrapher-towerman at Pueblo Junction, Colorado, and thereafter allowed, required or permitted train dispatchers located in Denver, Colorado, to perform the work formerly performed by the incumbents of such abolished positions.
2. Carrier shall now restore the work formerly performed by telegrapher-towermen at Pueblo Junction, Colorado, and now being performed by train dispatchers, to employees covered by the Telegraphers' Agreement, and;
3. Shall compensate the senior idle telegrapher (extra in preference) on the Colorado Division, one day's pay at the rate of the abolished positions, for each shift on each day the work formerly performed by telegrapher-towermen at Pueblo Junction, is performed by train dispatchers. Such compensation to commence at 12:01 AM, May 2, 1969 and to continue for each shift thereafter until the violation ceases.
4. The compensation called for in 3. above shall carry a rate of 12% interest compounded semi-annually, until paid to the claimants.

OPINION OF BOARD: Effective May 1, 1969, Carrier removed the control of five power switches previously operated by telegraphers at the CTC installation at Pueblo Junction to the train dispatchers' office at Denver, where they have been operated since that date by train dispatchers on their control board. On the same date all telegraphers' positions at Pueblo Junction were abolished.

The Organization argues that the Scope Rule as well as Supplement A of the Agreement were violated by this action. Supplement A in pertinent part reads:

"...CTC installations at Funston, Lehi, Tennessee Pass, Pueblo Yard, Thistle and Minturn, and all similar future installations, will be manned and operated by employees coming within the scope of the current agreement between the Carrier and the Order of Railroad Telegraphers, as re-issued December 1, 1939."

The Organization's position was well stated in its submission as follows:

"To sum up our position, Section I of Article III of the February 7, 1965 Agreement does contain the wording Carrier relied on; *** the Carrier shall have the right to transfer work and/or employees throughout the system (but it also contains the wording) 'which do not require the crossing of craft lines.' Carrier has transferred the work involved, across craft lines, and in changing its method of operation Carrier has:

1. Assigned Telegrapher's work to Train Dispatchers.
2. Craft lines were crossed in assigning this work to the Dispatchers.
3. Carrier agreed, by the terms of the Supplement 'A' Agreement that all similar future C.T.C. installations would be manned and operated by employees coming within the scope of the Telegraphers' Agreement."

We have recently considered a similar issue between the same parties (Award 19594), however this case may be distinguished since Supplement A is in issue herein but was not raised on the property in the previous case and was not considered. The record in this case indicates substantial conflict as to the meaning of that agreement (Supplement A) and the intent of the parties with respect thereto. Certainly the interpretation of that agreement is of considerable interest to the American Train Dispatchers Association. It should also be noted that there have been a long line of Awards and other disputes with respect to the work involved in this matter, and the work jurisdiction question still appears to be unresolved. (See Award 2804 and others referred to in the ATDA submission).

Carrier argues that this Board is without jurisdiction to handle this case, since the case involves the application of the February 7, 1965 Agreement. In support of this argument Carrier cites the General Chairman's letter of November 15, 1969 containing the following statement:

"This is a clear violation both of Article III of the February 7, 1965 Agreement which, as stated above, prohibits the transfer of work across craft lines, and of the working Agreement."

Carrier urges that the matter be referred to the Disputes Committee provided for in Article VII of that Agreement. In a long line of cases we have held "...that when the determination of a dispute is dependent upon the interpretation or application of the February 7, 1965 Agreement, that procedures established and accepted by the parties themselves for resolving disputes under that Agreement should be respected." (Award 17625). Contrary to Petitioner's argument that the terms of Article VII, Section 1 are permissive (supported by Award 18071), we will reaffirm those Awards (19295, 19371, 18602, 19166, 19289, 18925, 18602 and a host of others) which hold that the proper forum for resolving disputes arising from the February 7, 1965 National Agreement is the Disputes Committee established under that Agreement. In this case the issues cannot be resolved without an appropriate interpretation under that Agreement.

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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.