

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19767
Docket Number TE-15545

Benjamin Rubenstein, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly The Order of Railroad Telegraphers)
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Belt Railway Company of Chicago that said Carrier violated the parties' Agreement, as embodied in the two claims below shown, as filed by the General Chairman:

CLAIM NO. 1

I am filing a continuous claim beginning on June 2, 1964, for N. Spano, L. Hermosillo, W. Cunningham, G. Hanson and any other leverman who may have been displaced and suffered loss as a result of the abolishment of Le Moyne Tower on June 2, 1964.

This continuous claim is for the difference in compensation each is presently receiving on the position now assigned and earnings in subsequent employment plus all expenses incurred because of the action of the Carrier.

I am basing this claim on the following rules of the current Agreement:

Rules 1, 2(c), 2(e), Rule 4 (c) and 4 (g), tradition or past practice and other rules of the Agreement.

CLAIM NO. 2

This is a continuing claim for eight (8) hours' pay at Le Moyne Tower for each position abolished there and is to be in favor of the senior, idle employee, extra preferred, for each working day of the assignment.

These claims are based on Rule 1, Rule 2(c) (e), Rule 4(c)(g), Rule 10, Rule 16(e) of the current Agreement and past practices and tradition.

OPINION OF BOARD: The issue herein involves application of Rules 1; 2(c), (e); 4(c), (g); 10; and 16(e) of the agreement between the parties dated September 1, 1949 and amended July 1, 1966.

Rule 1 - Scope - provides:

"This schedule will govern the employment and compensation of telegraphers, telegrapher-clerks...agent telegraphers, tower-men, levermen,...and such other positions as are covered by this schedule or may hereafter be established and included by agreement and will supersede all previous schedules, agreements and rulings thereon.

"The titles 'telegrapher' or 'employee', when used herein, will refer to such employees who perform service covered by this agreement.

"Only employees covered by this agreement shall be required or permitted to perform work generally recognized as 'telegrapher's' work."

Rule 2(c) provides:

"Positions (not employees) shall be rated. Change, in classification of positions or rates of pay will be made only by agreement between Management and the Committee representing the employees."

Rule 2(e) provides:

"Positions covered by this agreement will be filled by employees from the official seniority lists provided for in Rule 16."

Rules 4(c) and (g), deal with hours of work, overtime and pay, and need not be cited herein.

The claimants were levermen operating switches at Le Moyne Tower, which switches were operated manually since 1883.

On June 2, 1964, pursuant to permission granted by ICC, the Carrier changed all mechanically operated switches at Le Moyne Towers, to electrically controlled switches operated at Clearing, Illinois. It abolished the positions of Levermen at Le Moyne Towers, and turned the work over to dispatchers at Clearing, Illinois, who are not covered by the Telegraphers' Agreement.

The Union contends that although the jobs were abolished, the work has not been eliminated and therefore belongs to the Organization.

The Carrier rejects this contention on the ground that "the work involved in method of handling trains at Le Moyne is not work belonging exclusively to employees represented" by the Organization and therefore there was no violation of any of the Rules alleged.

The Board has continually adhered to the principle that where the Scope Rule of an agreement is relied upon in a claim for return of work to the Organization, the Organization must prove, that the work was exclusively limited to it, by agreement, history and practice. The burden of proof in such cases is upon the claimant. Lacking such proof, the Carrier is not prevented from abolishing positions and transferring remaining work to employees not covered by the agreement.

Although Rule 1 (Scope) in the instant agreement does provide, that "only employees covered by this agreement shall be ... permitted to perform work generally recognized as 'telegrapher's' work", the Organization does not claim exclusiveness. In fact, it agrees that "the work involved in the change in the method of handling trains at Le Moyne is not work belonging exclusively" to the Organization (Letter of A. C. Hardtke, to D. R. Turner, September 11, 1964.) It merely asks that the Towermen be given a "proportion of the work".

We are bound by our numerous decisions and holdings to the effect, that unless prohibited from doing so by contract language, or by proof of the Organization, the Carrier may change forms of operation and abolish certain positions, in which event remaining work may be transferred to members of other organizations.

Award Number 19594, in which the same Organization appeared as Claimant, is directly in point. The duties of Towermen in South Denver had been abolished and certain work transferred to Train Dispatchers. Citing Award Nos. 9344, 11120, 12484 and 12695, we held that the Agreement was not violated. We are bound to adhere to those and numerous similar decisions.

We can not sustain the argument of the Organization, that "although the jobs at Le Moyne were abolished, ... the work has not been eliminated". The jobs were abolished, because there was no work left at Le Moyne for manual levermen.

Nor can the Board decide, or has jurisdiction to decide, the suggestion for dividing the work proportionately.

Award Number 19767
Docket Number TE-15545

Page 4

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 Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.