NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20039
THIRD DIVISION Docket Number TD-19982

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated and continues to violate the Agreement in effect between the parties, Article 1(b) thereof in particular, when instructions were issued on November 27, 1970 by the Carrier (C.W. Thompson File BX-452), providing that effective December 1, 1970, performance of work relating to distribution of fuel oil was arbitrarily removed from employes covered by the scope of said Agreement in Carrier's Vancouver, Washington train dispatching office and assigned to employes not within the scope of said Agreement.

(b) For the above violation, the Carrier shall now be required to compensate the senior available qualified extra train dispatcher one day's pay at the pro-rata rate of assistant chief dispatcher for each day, commencing with December 1, 1970, and continuing until said violation ceases.

(c) In the event that no qualified extra train dispatchers are available on any day or days in the period defined above, then and in such event, Carrier shall be required to compensate the senior qualified regularly assigned train dispatcher who is available due to observance of his weekly rest day, one day's compensation at the punitive rate of assistant chief dispatcher for each of such days that said violation continues.

(d) Eligible individual claimants entitled to compensation claimed herein are readily identifiable and shall be determined by a check of Carrier's records.

OPINION OF BOARD: Effective December 1, 1970, the Carrier changed the method of handling distribution of fuel oil, removing the responsibility for this function from the Operating Department and vesting it in the Material Department. This move was accomplished by the following teletype, distributed system-wide:

> "EFFECTIVE DECEMBER 1, 1970, THE MATERIAL DEPT WILL ASSUME THE CONTROL AND DISTRIBUTION OF GN, GNX, SPS AND SPSX TANK CARS IN COMPANY DIESEL OIL SERVICE NOW BEING HANDLED BY THE OPERATING DEPARTMENT.
>
> CARS WILL BE ASSIGNED BY THE MATERIAL DEPARTMENT TO VARIOUS OIL COMPANIES FOR LOADING AND SHIPMENT TO DESIGNATE LOCATIONS IN TURNAROUND SERVICE.

"FUEL REPORTS ACCOUNTING AND BILLING OF CARS NOW BEING HANDLED BY FREIGHT AGENTS OFFICE SHOULD BE TURNED OVER TO THE NEAREST MATERIAL MANAGER FOR HANDLING AFTER DECEMBER 1, 1970.

ALL CONCERNED ARE REQUESTED TO GIVE THE MATERIAL MANAGERS THEIR FULL COOPERATION AND ASSISTANCE TO FACILITATE TRANSFER OF THIS HANDLING TO THE MATERIAL DEPARTMENT.

PLEASE ACKNOWLEDGE RECEIPT."

The claim herein involves the Vancouver office of Carrier only.

Petitioner alleges that prior to the merger, which was effective March 3, 1970, the work in question had been performed by the train dispatcher force in the Vancouver office; also for some nine months following the merger into the Burlington Northern, the work had been performed under the applicable Agreement by the train dispatcher force. The Organization's position is based on Article 1 (b) of the Agreement which provides that the Chief and Assistant Chief Dispatcher's duties include ".... to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work." Petitioner argues that the "related work" of fuel oil distribution was "historically, customarily, traditionally and in practice assigned to and performed by chief and assistant chief dispatchers" in the Vancouver office and was incidental to and done in connection with their primary duties. Petitioner urges further, citing well reasoned awards, that the Carrier cannot remove work found to be within the scope of an agreement and give such work to employees not covered by the agreement.

Carrier argues that the work in question is not covered by the scope rule and the employees have no exclusive right to such work. An examination of the record indicates that the work involved herein is never precisely specified. There is an allusion to a clerical report involving fuel distribution, taking forty-five minutes to an hour a day for completion, which is the only direct reference to the work performed. We have had a number of previous claims involving the same type of problem with this scope rule. In Award 14385, we held:

"This work, not specifically mentioned in the Scope Rule, is claimed as 'related' work. As stated above, to claim the exclusive right to this work the Organization is obliged to show that it was historically and traditionally theirs on a system-wide basis. Proof that it was always handled by train dispatchers at Chafee is not proof that the parties intended that they have a contractual right thereto and, conversely, the fact that such work was handled by other crafts elsewhere is proof that Carrier did not intend to grant an exclusive right to this work under an agreement which applies throughout the system."

The same principle was expressed in Award 13829. In the instant case we have the repeated declaration by Petitioner that the work was performed historically and by tradition and custom in the Vancouver office by the train dispatcher force. This allegation is denied by Carrier and we find no evidence in the record to support Petitioner. Petitioner's position that the burden of proof lies with the Carrier on the matter of history and tradition is not well taken. We have repeatedly and consistently held that the burden of proof is upon the party asserting the claim (see for example Awards 13330, 13028, 7964 and 19963). Further we have said that mere statements that a violation has occurred are insufficient, without positive evidence, to substantiate the allegation (Award 6359).

If the work in question had been reserved exclusively to employees covered by the Agreement, then all of Petitioner's arguments would have considerable weight. However since there is no evidence that the work in question was performed exclusively by covered employees at the Vancouver office and certainly no indication of such exclusivity on a systemwide basis, we must reject Petitioner's arguments.

We deem it unnecessary to deal with the procedural issue concerning the identity of the claimants since we must deny the claim.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.