

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20341
Docket Number CL-20461

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Central Vermont Railway, Inc.
{ Brotherhood of Railway, Airline and Steamship Clerks
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Since Article VIII of the National Agreement dated February 25, 1971, accords the Carrier the exclusive option either to consolidate clerk-telegrapher work, or not to consolidate, and contains no prohibition against it, may the Carrier withdraw a notice of its desire to consolidate such work, where the Carrier advises the Organization of that withdrawal prior to any agreement being effected on such consolidation?

OPINION OF BOARD: The issue in this dispute is identical with that dealt with by this Board in Award 20161. The Claim, presented by the Carrier, presents the question of whether the Carrier may withdraw its notice and proposal that the BRAC-TCU Agreements be combined in accordance with the National Agreement dated February 25, 1971.

On February 16, 1972, Carrier served notice of its desire to exercise the option provided by Section 2(a) of Article VIII of the Agreement dated February 25, 1971 and to combine the rosters of the Clerks and Telegraphers. After more than a year of correspondence and negotiating meetings Carrier, on May 9, 1973 advised the Organization's representatives, at a conference, that it did not think it could afford the cost of a merged agreement. On June 19, 1973 Carrier formally withdrew its notice dated February 16, 1972 thus precipitating the dispute before us.

The sole discernible difference in circumstances in this dispute is that Carrier, with considerable candor, indicated it had second thoughts about the merged agreement because of the potential cost. Thus, in this instance we are furnished with a motive for the change initiated by Carrier, which was only speculative in the prior case. However, the basic question propounded herein differs not one whit from the prior dispute; is the Carrier precluded from withdrawing its option? We find no reason to change our thinking from that expressed earlier, and on the principle of stare decisis, we must conclude that Carrier could not be permitted to change its mind after exercising its option.

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 question in dispute is resolved in the negative.

A W A R D

The Carrier cannot withdraw its notice of its desire to consolidate work under Article VIII of the February 25, 1971 National Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.