NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20382
THIRD DIVISION Docket Number CL-19772

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Central Railroad Company of New Jersey (R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7097) that:

(A) Carrier violated the provisions of the Agreement, effective December 15, 1952, also Supplements to the Agreement, particular reference to Rule No. 1(g) and No. 9(a)(4)(b), when position of Chief Clerk, Job No. D-57, incumbent G. Wetzel, Jr. Freight Office, Wilkes Barre, Pennsylvania was improperly abolished, effective with the end of tour of duty, Thursday, May 13, 1971, work items presently covered by Job No. D-57 assigned to the Agent at Wilkes Barre, Pennsylvania, effective with his start of tour of duty on Friday, May 14, 1971.

(B) Carrier now be required to properly compensate Mr. G. Wetzel, Jr. a day's pay, rate $32.0039 per day, commencing May 17, 1971, claim to continue for a day's pay until the violation has been properly corrected, due to the improper abolishment of Mr. Wetzel's position.

(C) Carrier be further required to properly compensate Mr. Myron Dubee a day's pay at the rate of $34.42 per day, commencing May 17, 1971, claim to continue for a day's pay until the violation has been properly corrected, due to Mr. Dubee being improperly displaced on account of Mr. Wetzel's position being improperly abolished.

(D) Carrier be further required to properly compensate Mr. Thomas James a day's pay at the rates of $34.42 and $33.17 per day, assigned to a Cycle Position in the Ashley area, commencing May 17, 1971, claim to continue for a day's pay until the violation has been properly corrected, due to Mr. James being improperly displaced, on account of Mr. Wetzel's position being improperly abolished.

(E) Carrier be further required to properly compensate Mr. Edward Trojanowski a day's pay at the rate of $33.17 per day, commencing May 17, 1971, claim to continue for a day's pay until the violation has been properly corrected, due to Mr. Trojanowski being improperly displaced, on account of Mr. Wetzel's position being improperly abolished.

(F) Carrier also be required to properly compensate Mr. J. Bulkley, Jr. a day's pay at the rate of $33.17, per day, commencing May 17, 1971, claim to continue for a day's pay until the violation has been properly corrected, the reason; Mr. Bulkley being improperly displaced on account of Mr. Wetzel's position as Chief Clerk, Wilkes Barre, Pennsylvania being improperly abolished.

OPINION OF BOARD: Under date of May 3, 1971, Carrier's Director Operation Services wrote:

> Mr. W. Czapp, District Chairman
> Brotherhood of Railway, Airline and Steamship Clerks
> c/o Superintendant's office
> Allentown, Pa.
>
> Dear Sir:
>
> In accordance with the provisions of the Agreement, notice is hereby given of our intention to make the following changes.
>
> Effective with the end of tour of duty on Thursday, May 13, 1971, Job #D57, Chief Clerk at Wilkes Barre, Pa. will be abolished.
>
> Exhibit "D" copy attached, has been issued to Chief Clerk G. Wetzel Jr. incumbent of job #D57.
>
> The work items presently covered by job #D57 will be accomplished by the Agent at Wilkes Barre, Pa. effective with his start of tour of duty on Friday, May 14, 1971.
>
> Reduction is being made account decline in business.

(NOTE: Chief Clerk G. Wetzel, Jr. will be referred to herein as "Claimant." Petitioner will be referred to as "Clerks." Respondent will be referred to as "Carrier." All emphasis herein will be supplied unless otherwise indicated.)

On May 6, 1971, the District Chairman, by letter, replied to Director Operations. Said letter in material part reads:

I do not agree and will not concur to the contents as outlined in your letter of May 3, 1971 in regards to these changes at the Wilkes Barre Freight Station, Wilkes Barre, Penna.

Therefore, I am now requesting that you recall this letter of May 3, 1971, addressed to the undersigned and enter into a Joint Check on the position of Chief Clerk, Job No. D-57, Wilkes Barre, Penna., advising the undersigned time and date that Joint Check will be accomplished.

This in accordance with Rule No. 9, Paragraph (a)4(b), amended as of December 1, 1968 between the Central Railroad Co. of New Jersey and the Brotherhood of Railway and Airline Clerks.

A joint check was arranged by telephone on May 12, 1971, and accomplished on that date by a designee of Carrier; and, a designee of Clerks. The designees signed a joint detailed report in which it was concluded that the work performed by Claimant consumed four (4) hours and thirty-four (34) minutes per day. Notwithstanding the joint findings of the designees Carrier abolished the Chief Clerk position, Job No. D-57, at the end of the tour of duty on May 13, 1971.

The chief officer of the Carrier designated to handle such disputes (Vice President-Employee Relations), in a letter dated December 6, 1971, addressed to Clerks' General Chairman gave as reasons for denial:

Mr. Horchler's denial of July 20, to District Chairman Czapp, pointed out that a joint check made on May 12 of the position subsequently abolished, revealed that Mr. Wetzel consumed four hours, thirty minutes performing duties of the position, including fifty minutes on the telephone.

It is our contention, as previously expressed, that while Rule 9(a) 4(b) of the BRAC agreement limits re-assignment of duties in abolishment of positions to those involving four hours work, the Dorsey Award on this property in 1970 established the principle that such an abolishment is proper when elimination of a clerical position results in the Agent being the last employe remaining at a particular station. Additionally, it is our contention that telephone work, per se, is not exclusively the province of any single craft or class of employes. Relating this again to the Dorsey Award, under the ebb and flow principle, since the Agent was the first employe at the station, telephone duties were

initially the agent's work and return of it to the Agent is not in itself a violation of the Clerks' agreement.

PERTINENT PROVISIONS OF AGREEMENT

Rule No. 1 - SCOPE contains the following provision:

(g) Positions or work within the scope of this Agreement belong to the Employees covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employees covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9(a)(4)(b) or by mutual agreement between the Management and the General Chairman.

Rule No. 9 - REDUCING FORCES mandates, in relevant part:

(4) When a position covered by this agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(a) To another position or other positions covered by this agreement when such position or other positions remain in existence at the location where the work of the abolished position is to be performed.

(b) In the event no such position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yardmaster, Foreman or other supervisory employee, provided that less than four (4) hours work per day of the abolished position or positions remains to be performed; and further provided, that such work is incident to the duties of an Agent, Yardmaster, Foreman or other supervisory employee; and further provided that prior to the abolishment of such position, upon request by either party, the Employing Officer and District Chairman, or their duly authorized representatives, will make a joint check to determine if less than the four (4) hours of clerical work remains on the position to be abolished.

These provisions must be read together in our adjudication of the dispute.

CARRIER'S POSITION

It is Carrier's contentions that: (1) the use of the telephone is not the exclusive work of Clerks or any other craft or class of employees - it cites T.C.U. v. Union Pacific R. Co., 385 U.S. 157 (1966) in support; and (2) the joint check of May 12 shows that fifty (50) minutes of Claimant's daily work as Chief Clerk was devoted to use of the telephone and this amount of time must be subtracted from the total daily time of four (4) hours and thirty-four (34) minutes of daily work as detailed in the joint check; consequently, reducing Claimant's working time on work exclusively reserved to Clerks to less than four (4) hours; and, (3) Carrier's position (2) being true, Carrier had no contractual restraints to enjoin it from abolishing the Chief Clerk's Position and, to applying the "ebb and flow" doctrine in assigning the remaining work of the Chief Clerk's Position to the Agent who remained at the location--in support Carrier cites what it refers to as the "Dorsey Award" in the matter of arbitration between T.C.U. and BRAC which was issued on July 14, 1970.

RESOLUTION

It is firmly established that: (1) the use of the telephone is not exclusively reserved to Clerks.

The joint check of May 12 stands undisputed in the record.

The Union Pacific case involved the question of due process when more than one Organization laid claim to the same work, a situation not existent in the instant dispute.

The so-called "Dorsey case" decided a dispute between T.C.U. and BRAC involving interpretation and application of a Merger Agreement entered into between the two labor organizations on February 21, 1969. The Merger Agreement was a private contract; not a collective bargaining agreement.

The Opinion states:

> We agree with Clerks that the Merger Agreement "did not change any Agreements or rules between" Clerks and Carrier. To this we add the Agreement did not change any Agreements or rules between Telegraphers and Carrier. See, Sections 2.9 and 2.10, ...

Carrier (nor any other carrier) is not a party to the Merger Agreement and is in no way bound by its terms.

Existing collective bargaining agreements between Carrier and Clerks or Carrier and Telegraphers can only be changed by the respective parties to each individual agreement in conformity with the procedures prescribed in the Railway Labor Act.

We now come to interpretation of the Rules Agreements existing between the parties herein.

The words "Positions or work within the scope of this Agreement belong to the Employees covered herein" have been interpreted by the case law of this Board to mean that work not exclusively reserved to Clerks but assigned to a Clerk's position becomes the work of the position and is subject to the Rules of Clerk's Agreement. This being established the telephone work performed by Claimant as part of the duties of Position No. D-57 was included in the scope of Clerk's Agreement. Therefore, under Rule 9 (4)(b) the joint check of May 12, 1971, proves that more than four (4) hours work per day of the abolished position and subject to the Clerk's Rules--Position No. D-57--remained to be performed. Ergo, Carrier violated the Agreement. We will sustain paragraphs (A) and (B) of the Claim; and we will dismiss paragraphs (C), (D), (E) and (F) of the Claim for lack of proof.

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

Carrier violated paragraphs (A) and (B) of the Claim.

Paragraphs (C), (D), (E) and (F) of the Claim fail for lack of proof.

A W A R D

I. Paragraphs (A) and (B) of the Claim are sustained.

II. Paragraphs (C), (D), (E) and (F) of the Claim are dismissed for lack of proof.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20382, DOCKET CL-19772

(Referee Dorsey)

We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

J I Maylon

A M Braidwood

W. B. Jones

P C Carter

G M Yourtee

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT
TO AWARD 20382 (CL-19772)
(Referee Dorsey)

In normal circumstances, the brief, self-serving comments of Carrier Members' dissent would not require answer, inasmuch as disputes submitted to this Board are adjudicated on a consideration of the facts and evidence in the official record as detailed and explained by the parties to the dispute in their submissions and rebuttals and are not decided upon Carrier Members' Memoranda. However, in this case, we will make an exception and answer the "Dissent" because of certain interesting statements contained in the Memorandum referred to by the dissenters. The penultimate paragraph of that Memorandum states:

> "We believe the parties are fortunate in having this case assigned to the same Referee Dorsey who rendered the award which Carrier has cited as a second defense to the claim. The Dorsey award itself is fully reproduced in the file at pages 32 to 50, and the Referee is in a better position than anyone else to say what the effect of that award should be in the instant case."

Referee Dorsey stated what the effect of his Award was, and now the Carrier Members are unhappy about it.

The dissent is frivolous.

J. C. Fletcher
9-27-74