NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20629
THIRD DIVISION Docket Number CL-20138

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7283) that:

1. Carrier violated the Telegraphers' Agreement (TCU) and the May 20, 1970 Memorandum Agreement when it required and/or permitted employes who are not covered by the Telegraphers' Agreement to handle train orders at locations where no employe covered by the T-C Division, BRAC Agreement is employed, and then failed and refused to compensate claimant Mrs. M. S. Nelson, as required by Paragraph 2 of the May 20, 1970 Memorandum Agreement. (Carrier's File 380-2861) (Employes' File 2350 - Sub-File X-121).

2. Carrier shall now be required to compensate Mrs. M. S. Nelson, Telegrapher, three hours at pro rata rate, as required by the May 20, 1970 Memorandum Agreement for each of the train orders handled on the dates and at locations outlined in original letter of claim dated November 11, 1970, for 54 call payments.

OPINION OF BOARD: Carrier maintains among other facilities at North Little Rock, Arkansas a large classification terminal comprising several yards. Since 1960 Carrier has used a pneumatic tube system between the yards and telegraph offices via which papers and documents, including train orders and clearances, are transmitted. This pneumatic tube system is comprised of two segments; one running a distance of some two miles from the Locust Street telegraph offices (denominated by the parties and hereinafter "N.S. Tower") to Crest Yard Office; and the other segment from Crest Yard to Bowl Yard Office, a distance of approximately one mile. The record indicates that train orders and clearances are received, copied and distributed by telegraphers at N.S. Tower. West and southbound trains out of North Little Rock pick up their orders as necessary when they pass the NS Tower. Trains operating north and east out of the terminal get orders and clearances, via the pneumatic tube, at Bowl Yard.

The pneumatic system is utilized to transmit clearance and train orders to out bound trains at Bowl Yard as follows: Telegraphers at NS Tower place the clearances and orders in the tube and forward same to Crest Yard Office; at Crest Yard Office clerical employees (there are no telegraphers assigned at Crest Yard) remove transmitted capsules containing clearances and train orders from the tube from NS Tower and place them in the tube to Bowl Yard Office; at Bowl Yard office the clearances and train

orders are received and removed by Car Foremen who then deliver same to the train conductor, or crew. (There are no telegraphers assigned at Bowl Yard).

The gravamen of the instant claim is that between the dates of September 16, 1970 and October 29, 1970 train orders were handled a total of 54 times by Clerks at Crest Yard and Car Foreman at Bowl Yard in the manner described supra, but that Carrier nonetheless refused to pay a call for each such handling pursuant to the terms of the Memorandum of Agreement between the parties dated May 20, 1970. The Organization contends that such payment is mandated by the express language of the Agreement and that Carrier's refusal to pay the calls is clear violation thereof.

The Agreement at issue reads in pertinent part as follows:

> "2. When train orders, or communication which serve the purpose of train orders, are handled by persons other than covered by this agreement and train dispatchers at locations where no employe covered by the T-C Div., BRAC Agreement is employed, other than under the exceptions set forth in Rule 1(b) (a) (Missouri Pacific); Rule 2(c) (Texas and Louisiana); and Rule 2(d-4) (Missouri-Illinois), a telegrapher designated by the district chairman will be allowed a call - three hours at the minimum telegrapher pro rata rate applicable on the seniority district."

In refuting the Organizations position Carrier relies primarily on the procedural argument that the claim was not timely raised on the property and upon the substantive contention that the May 20, 1970 Agreement does not apply to Carrier's operations at North Little Rock Terminal. Suffice it to say we are not persuaded by Carrier's allegations of untimeliness, cloaked as they are with apparently mistaken arguments that we are dealing here with a "continuing violation", if any. We are satisfied from our review of the record that the instant claim was filed in accordance with the time limit on claims rule, upon discovery of the alleged violations.

The major contentions of the parties regard the applicability of the May 20, 1970 Agreement to the North Little Rock facilities generally and to Crest Yard and Bowl Yard Offices specifically. This central question turns on the construction to be given the word "locations" in the May 20, 1970 Agreement. In this connection, Carrier asserts that telegraphers are employed at North Little Rock Terminal,i.e.,at the NS Tower and, therefore, the Agreement has no application whatsoever in the entire terminal, inclusive of Locust and Bowl Yard Offices. The Organization, on the other hand maintains that the Agreement has reference precisely to situations such as exist at Locust and Bowl Yard Offices where no employe covered by the T-C Division, BRAC Agreement is employed. Thus the issue for us is fairly framed in terms of a search for the intention of the parties when they agreed to use the word "location" in their Agreement.

In problems of contract interpretation where the meaning of a term is not clear, it frequently is instructive to examine the relevant circumstances surrounding and leading up to the making of the Agreement. In this connection, we note that each of the parties has cited numerous Awards of boards of adjustment to support their respective positions. Careful examination shows that none of the awards cited are dispositive of this dispute because: 1) Most of the awards cited predate the May 20, 1970 Agreement and involve interpretations of the Scope Rule; 2) Of the four awards issued by this Division interpreting and applying the May 20 Agreement none is directly on point with the issues now before us. It should be pointed out also that each of the parties relies on Award No. 29 of Public Law Board 193, involving the pneumatic tube system at North Little Rock, to support its respective position in this case. Although we do not find any of the cited awards controlling herein as precedent, we are persuaded that they formed an important part of the context in which the parties reached agreement on the language of the May 20, 1970 Memorandum of Agreement. Of special relevance in this connection is Award No. 30 of P. L. Board 193.

The May 20, 1970 Agreement was consumated after nearly nine years of conferences and negotiations between the parties pursuant to Sec. 6 notices first served in 1961. It is an historical fact that during this period a series of awards by various boards of adjustment denied claims of Scope Rule or Train Order Rule violations in connection with the use of pneumatic tubes for the delivery of train orders. See Award 7343, 8327, 9988 and Award No. 30, S.B.A. 305. It was in this context that the additional language of the May 20, 1970 Agreement was added to the parties agreements whereby Carrier agreed to pay a penalty comprising a three hour call when train orders are handled by persons other than those covered by the Telegraphers Agreement at locations when no employe covered by the Telegraphers Agreement is employed. It is especially instructive and significant to note that the parties used the word "location" therein rather than the word "point" which had been used in the old Train Order Rule.

Award No. 29 of P.L. Board 193 was issued in late October 1969 some seven months before the consumation of the May 20, 1970 Agreement. That Award deals with the same parties, the same pneumatic tube system and the same locus in quo, namely NS Tower, Crest Yard Office and Bowl Yard Office as does the instant case. Inasmuch as the Award itself construes the old Scope Rule which is in some respects in material variance with the Agreement we must interpret herein, it is not dispositive directly of our case. We find however that the Opinion of the Board in that award commences with the phrase: "There are three separate locations involved in this dispute, the NS Tower - Crest Yard - and Bowl Yard Office" (Emphasis added).

It cannot be gainsaid that this Award of P.L. Board 193 was fresh in the minds of both parties as they negotiated and consumated the May 20, 1970 Agreement. We find it highly significant that these parties used the word "locations" as it was used in that Award, rather than the familiar "point" used in the Train Order or Scope Rule. We are persuaded by all of the foregoing that for purposes of the May 20, 1970 Agreement the Crest Yard and Bowl Yard Offices are locations to which the parties intended that Agreement to apply. Having so decided it remains to be seen whether the Agreement was violated in the instant circumstances.

It is unrefuted that no employe covered by the T-C Division, BRAC Agreement is employed at either Crest or Bowl Yards and we have found that these each are locations as contenanced by the Agreement. Having shown this much, the Organization must yet show "handling" by persons other than those covered by the Telegraph Agreement to support a proper designation for the penalty call.

Close consideration of the record shows that the capsules containing train orders are especially marked and may not, by Carrier instructions, be used for other materials . Under the system described supra these train orders are encapsulated at Locust Street and sent to Crest Yard. The unrefuted record shows that these special capsules, destined for Bowl Yard, are taken from the tube unopened at Crest Yard and placed in the tube to Bowl Yard Office. In these circumstances we must find that the employe at Crest Yard is merely an incidental link in the pneumatic tube system and that transferring unopened transit capsules from one tube to another does not constitute handling for purposes of the May 20, 1970 Agreement. Consequently, we must deny the claim insofar as it seeks penalty payments for such activity at Crest Yard during the claim period.

The claimed violation regarding non-payment of designated calls for activity at Bowl Yard, however, stand on a different footing. Regarding the question of handling by Car Foremen who delivered to conductors the train orders coming out of the end of the tube at Bowl Yard, we are guided by a long line of Awards including our own recent Award 20126 to wit:

> "From our study of the Awards cited by the parties, and from our study of the 1970 Agreement ... we conclude that 'handle' in the Agreement includes 'delivery' of a train order to the train crew that is to execute the order."

See also Awards 12371, 18436 and Award No. 8, Public Law Board No. 713.

Carrier asserts that hand to hand delivery is not required by the Agreement and that use of the pneumatic tube has been held to constitute delivery by the telegrapher to the train crew. This assumes, however, that the recipient at the destination end of the tube is the conductor or crew. Such was not the case at Bowl Yard as shown by this record. The Organization's contentions and evidence stand unrefuted that Car Foremen were the immediate recipients at Bowl Yard Office and they in turn delivered the train orders to the conductor or crew. Since Bowl Yard is a location at which no employe covered by the T-C Division, BRAC Agreement is employed, each such delivery gives rise to a right in the instant claim to designate a telegrapher to whom a call must be allowed by Carrier (3 hours at the minimum pro rata rate) under the May 20, 1970 Agreement. We find that Carrier refusal to pay such calls herein does constitute a clear violation of the May 20, 1970 Agreement. Accordingly, we shall sustain the claim insofar as it relates to non-payment of the calls for the handling of train orders at Bowl Yard by Car Foremen.

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.