NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20839
Docket Number CL-20583

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7464) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule, Rules 2-A-1, 3-C-1, 4-A-1, 5-C-1, 9-A-1, 9-A-2, among others, when it abolished five (5) eight (8) hour Chauffeur positions at the close of business at 4:00 P.M. on August 29, 1972, and gave or transferred all the work to Electricians (Electric Traction) and their helpers employed in the Engineering Department, who are not covered by the Scope of the Clerks' Agreement.

2. The work shall be returned to the employes covered by the Scope of the Clerks' Agreement (according to paragraph B) upon whose behalf the Agreements were made in accordance with the provisions of the Railway Labor Act to perform this work.

3. The Carrier shall pay Chauffeur E. Jackson, R. Scott, J. Johnson and J. J. Hartman, a day's pay for each day an electrician and/or electrician helper outside the Clerks' Agreement performs his regular assigned work for eight (8) hours, in addition to the position he was forced to illegally displace in Morris Park Shops, effective August 30, 1972 and for each day thereafter until the violations are corrected and the work again assigned and performed by Chauffeurs covered by the Clerks' Agreement.

4. The Carrier shall pay Chauffeurs T. P. Burns, E. L. Necci, A. Davis, E. Colman Industrial Truck Drivers, T. H. Reid, L. T. Gordon, and Laborers J. N. Kellam, W. P. Richardson, A. J. Ensalata, H. Davidson, C. Shepard and A. Berscak, a day's pay for each day they were illegally displaced from their regular positions in Morris Park and Holban Yard Shops and Storerooms, by Chauffeurs J. J. Hartman, E. Jackson, R. Scott and J. Johnson, in addition to the positions they were also forced to illegally displace in Morris Park and Holban Yard Shops and Storerooms, effective August 30, 1972 and for each day thereafter until the violations are corrected and the chauffeuring work in the Electric Traction department is again assigned the Chauffeurs under the Scope of the Clerks' Agreement.

OPINION OF BOARD: This dispute arose when on May 31, 1972 and June 8, 1972 the Carrier abolished five chauffeur positions at Morris Park and Jamaica. The work performed by these chauffeur positions was transferred to electricians and helpers outside the scope of the BRAC agreement.

It is the contention of the Organization that the abolishment of these positions coupled with the transfer of the work previously performed by the occupants of those positions to employees outside the scope of the BRAC agreement constituted a violation of the BRAC agreement, particularly the Scope Rule of said agreement.

Paragraph (b) of the Scope Rule reads as follows: "(b) Positions and work coming within the Scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions and work from the application of these rules, except by agreement between the parties signatory hereto."

Further, "Chauffeurs (except those covered by M of E or M of W Department employees agreement)" are listed in group 2 of paragraph F of said agreement.

Notice of this dispute was given to the International Brotherhood of Electrical Workers who filed a submission with this Board wherein they claimed the right to perform the disputed work in that the same is covered by an agreement between the Carrier and System Federation Number 156 of the International Brotherhood of Electrical Workers.

The Organization has submitted to this Board as precedent in the instant dispute Awards Number One through Five before Public Law Board 954 between the parties hereto and involving basically the same issues. The Carrier has responded to the effect that the awards presented are palpably in error and therefore should not constitute valid precedent.

We have examined the awards of Public Law Board 954 and in particular Award Number One wherein the opinion is more detailed. We are unable to agree with the Carrier's contention that the awards are palpably in error. With regard to the instant case we are in particular agreement with the following language which is applicable to this dispute, "The weight of authority of Third Division, National Railroad Adjustment Board Case Law compels of finding that when the Scope Rule of an agreement encompasses 'positions and work' that work once assigned by a Carrier to employees within the collective bargaining unit thereby becomes vested in employees within the unit and may not be removed 'except by agreement between the parties'."It is neither contended nor proved that the work that was transferred to employees not covered by the agreement was not theretofor assigned by the Carrier to employees within the collective bargaining unit.

Further, in the instant case the Carrier has set forth that the work involved was incidental to the duties performed by the claimants. Carrier states in its submission that "for the little amount of work done by the claimants, Carrier justifiably decided that their jobs could be eliminated." We again quote from the language of Award Number One of Public Law Board 954 wherein it was stated "Carrier's defense that the work performed by IBEW laborer Flynn, was 'negligible' is found wanting for two reasons; (1) the defense is an affirmative one - Carrier had the burden of proof which it did not satisfy by material and relevant evidence of probative value; and (2) even if proven it would establish, only, that it had assigned work reserved to BRAC chauffeurs (Scope Rule, paragraph (b) to an employee stranger to the BRAC agreement. The magnitude and frequency of work unilaterally wrongfully removed from the scope of the BRAC agreement is not a justifiable defense;".

The third party issue was raised in the dispute which was the subject matter of Award Number One of Public Law Board 954. The language of Award Number One of Public Law Board 954 denying the plea of the IBEW that a finding be made that the work in question was properly assigned to the IBEW is applicable in the instant dispute.

The Carrier has raised the issue of the damages that could properly be awarded in the instant matter. We must agree with the Carrier that the damages prayed for by the Organization in its statement of claim are excessive. We believe the proper measure of damages in the instant case is that prayed for in paragraph three of the statement of claim. We will dismiss paragraph four of the claim. We will further dismiss paragraph two of the claim in that the relief prayed for in paragraph two is relief which this Board is not empowered to grant.

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

Paragraphs one and three sustained. Paragraphs two and four dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.