NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20917
Docket Number CL-20842

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7636) that:

1. Carrier violated and continues to violate the Agreement between the parties when, commencing on November 30, 1972, it removed the work of operating remote control interlocking machine at SH Tower, Venice, Illinois, from the Scope thereof and assigned it to employes not covered thereby (Carrier's File 013-255-13).

2. Carrier shall, as a result, compensate the senior idle Telegrapher, extra in preference, eight hours' pay at the rate of Leverman-Operator, which he would have received if permitted to perform this work, for each shift commencing November 30, 1972 until the violation is corrected.

OPINION OF BOARD: The Statement of Claim sets forth generally the nature of the dispute here involved. Its reference, however, to removing "the work of operating remote control interlocking machine" at SH Tower is somewhat misleading. Actually two types of machines are involved. The first being a remote control interlocking machine (RCIM, for brevity) operated by Towermen or Levermen "by means of levers" under the general direction of a Train Dispatcher. Such work has normally been performed by Levermen Operators under their Agreement with Carrier dated October 1, 1957 (the controlling Agreement in this dispute.)

The second machine is a newer and more complicated machine, installed on the property of this Carrier for the first time on November 30, 1972. This is a Centralized Traffic Control System (CTC) controlling the movement of trains by automatic signal device from a designated point, superseding time tables and use of train orders. The latter machine is operated automatically by push button method and not "by means of levers".

Basically, it is Petitioner's contention that the disputed work belongs exclusively to the Levermen Operators under the Scope Rule of their 1957 Agreement; that the work involved is identical; and that the CTC merely replaced the RCIM without changing the nature of the work.

Carrier responds that the installation of the CTC machine constituted work different in nature from the RCIM and eliminated the need for

the Leverman Operator position at SH Tower, without reduction in force; that it is well established that where a CTC panel is located in an office in which Train Dispatchers are employed, said panel is to be operated by Train Dispatchers; and, that such work is specifically covered by the Scope Rule of the Train Dispatchers Agreement with effective date of January 1, 1965.

Obviously, the Train Dispatchers Organization is an interested party in this dispute. Accordingly, pursuant to invitation of this Board, the latter Organization has filed its written Submission, which is now part of the record before us and which is basically in accord with Carrier's position as stated above.

Hence, due process having been observed and complied with, we deem it to be within the jurisdiction of this Board to resolve this dispute on its merits, with binding effect upon both Organizations and upon Carrier. The foregoing conclusion on the principle of "due process" is fully supported in Award No. 1, P.L.B. No. 964, citing T.-C.E.U. vs. Union Pacific R. Co., 385 U.S. 157, (U.S. Supreme Court, 1966). Before proceeding to the merits, however, reference is made to several general principles of construction which Petitioner asserts are controlling in this dispute.

We do not quarrel with the concept that this Board is not clothed with authority to revise, delete from or add language to the controlling Agreement. This Board has consistently adhered to this principle in innumerable prior Awards and has no intention to depart therefrom in rendering this decision.

Petitioner urges further that the place of performance of work determines the craft or class of employes to whom it belongs. However, Awards 864, 2693, 14907 and 14884, cited by Petitioner, deal with entirely dissimilar factual situations and do not support the latter contention which, in any event, is not determinative of the issues in this case.

Additionally, we do not dispute the general principle, or the voluminous precedents cited by Petitioner in support thereof, that positions or work once within the Agreement cannot be removed therefrom arbitrarily or unilaterally and the work assigned to persons excepted from the Agreement. The correlative to this principle, however, is the controlling procedural rule that each agreement and each Scope Rule must be separately reviewed as against the particular facts of each case. Thus, we can ascertain whether or not the disputed work is in fact within the specific coverage of the particular Scope Rule and whether one Organization or another has exclusive rights thereto.

In this context, we do not find the cases cited by Petitioner germane to the dispute now before us. Thus, for example, Award No. 5787 is a discipline case; No. 1314 deals with clerical work assigned to others

in violation of the Agreement; No. 7129 relates to clerical work which was being performed by Clerks "at the time the Scope Rule was agreed upon"; No. 7168 deals with transfer of covered work solely because of Carrier's "transfer from Boston to Chicago"; No. 7349 similarly relates to transfer of location; No. 2253 dealt with violations of a specific Memorandum Agreement; No. 11127 dealt with assignment to others of clerical work "exclusively" covered by the Clerks Agreement; and No. 11586 related to reassignment of work in violation of a specific Scope Rule.

Moreover, we have no quarrel with Petitioner's contention that the Agreement supersedes Carrier's operating rules or general orders, nor with the cited supporting precedents. However, this general principle must be weighed against inherent prerogatives of Management; for example, the discontinuance of specific positions and reassignment of job functions where not specifically restricted by the Agreement. But this is not the main issue before us in this dispute. What is here involved is resolution of a long standing jurisdictional dispute as to CTC operation; more specifically, application to the disputed work of the separate Agreements of Carrier with the Clerk-Telegraphers and with the Train Dispatchers, respectively, and of their respective Scope Rules.

This brings us directly to the basic issues which are at the core of this dispute; i.e., the Scope Rules of both Organizations. The Scope Rule of the Train Dispatchers Agreement reads as follows:

"ARTICLE 1

(a) - SCOPE:

The rules of this agreement shall govern the hours of service, compensation and working conditions of all persons who perform service as train dispatcher. The term 'train dispatcher' as used herein shall include trick, relief, and extra dispatchers.

(b) - DEFINITION - TRICK DISPATCHERS, RELIEF DISPATCHERS, EXTRA DISPATCHERS:

This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

Note: Nothing in this Section (b) shall be considered as changing the present work jurisdiction of train dispatchers.

"(c) - RETITLING POSITIONS:

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class or work, which will have the effect of reducing rates of pay or evading the application of these rules."

It is true, as contended by the Train Dispatchers, that "the movement of trains by train orders, or otherwise" is included in the above Scope Rule, but we find no specific provision therein that the disputed work is exclusively theirs to perform, nor does the quoted Scope Rule constitute an "exclusive work reservation rule", particularly as to the work here in issue.

For facility of comparison, we quote the Clerk-Telegraphers' Scope Rule:

"ARTICLE 1
SCOPE

(a) It is agreed by and between the Terminal Railroad Association of St. Louis and The Order of Railroad Telegraphers that the following shall govern the employment and working conditions of employees coming within and performing the duties of the following classifications:

Train Directors
Telautograph Operators
Train Order or Bulletin Board Operators
Telegraphers or Telephone Operators (except Switchboard Operators)
Towermen or Levermen - Traveling Towermen
Towermen-Operators or Levermen-Operators
Staffmen
Printer Operators (punching, transmitting or receiving)
Any combination of two or more of the herein named classifications and occupants of any other positions listed in the wage schedule.

(b) This agreement shall not apply to the operation of printer teletype machines used solely for the purpose of communicating between offices on this Terminal property where such machines are not located in telegraph offices and provided such machines are not connected to reperforators, reprinters or through circuits.

"(c) The word 'employee' as used in this agreement shall include all classifications and assistants thereto named in Paragraph (a), unless a specific classification or classifications are set forth. The word 'station' means the location at which an employee performs service.

(d) Positions covered by this agreement must be filled by employees coming within the scope of the agreement. The work covered belongs to the employees herein classified and shall not be removed from the scope except by agreement between the parties."

There then follows the Wage Schedule of the covered employes, but this neither enlarges nor limits the Scope Rule itself. We note Petitioner's contention that subdivision "(d)" is a "special Rule", precise in nature, in that it states that "The work covered belongs to the employes herein classified". But we are constrained to point out that the "work covered" is not specifically described; nor is there any exclusive "work reservation rule" or any other specific provision in the Agreement which exclusively reserves the disputed work to the Clerk-Telegraphers.

We note, further, that there is no reference to "movement of trains" in the latter Agreement. Further, that there is no reference to CTC systems or operations in either Agreement.

In these circumstances, we have held repeatedly that where the Scope Rule is general in nature, as is the case here as to both Scope Rules, the burden of proof is on the Organization claiming the work to establish by substantial probative evidence that the employes it represents have performed such work historically, traditionally and exclusively, and system-wide.

See Awards 10389 (Dugan), 13579 (Wolf), 15383 (Ives), 15539 (McGovern), 16609 (Devine), 18471 (O'Brien), 18935 (Cull), 19576 (Lieberman) and 19969 (Roadley), among a host of others.

Neither Organization has sustained such burden of proof; nor can we conclude that the principle of "exclusivity" has been successfully established by either of the contesting Organizations. Furthermore, in similar cases before this Board, involving either or both of the above-quoted Scope Rules, the same conclusion as to non-exclusivity was reached.

See Awards 4452 (Carter), 4768 (Stone), 6224 (McMahon), 11821 (Christian), 14341 and 14342 (Perelson), and 19594 (Brent).

Petitioner cites several prior Awards as controlling here on the merits, only one of which is somewhat in point. That Award, No. 18884 (Cull), involved a CTC system and precisely the same Carrier and the same

Scope Rule of the Train Dispatchers as in this dispute. The claim presented by the Train Dispatchers was in fact denied, based on the conclusion that the CTC machine did "essentially the same work as was performed by the machine operated by the Leverman Operator at the West Market Street Tower before it was retired" and the fact that such work was performed by "three Leverman Operators on a seven day basis". However, there was no analysis of the Scope Rule in the latter opinion, nor any reference at all to prior Awards as precedent.

Curiously, the Referee did make the following statement:

> "The issue in this case is a narrow one. It does not involve the jurisdiction of the Dispatcher at SH Tower over the movement of trains." (Emphasis supplied)

The latter conclusion seems diametrically opposed to the conclusion reached by several Referees in other Awards, which will be referred to in detail hereinafter. In any event, we consider Award 18884 as being limited to the peculiar facts and the "narrow issue" there involved. We do not consider it controlling upon this dispute, nor does it accord with the weight of authority on the principles governing the disputed work.

Carrier, on its part, cites some twenty-one prior Awards as precedent for its position. In the main, these are germane to this dispute and merit detailed analysis. Several of these Awards contain excellent analysis of the CTC system, the pertinent Scope Rules and the same disputed work, but they do not serve as controlling precedents. For, in each case, the question of the Board's jurisdiction was raised in relation to "jurisdictional disputes", and each case was "remanded" for "further negotiations" or for submission to the National Mediation Board for resolution of the jurisdiction issue.

In the latter context, on "remand", we refer to Awards 4452, 4768, 4769, 8413, 8458, 8460, 9209, 10725, 14459 and 14461.

Award 9209 (McMahon) is of significance in the respect that although it was found "that the operations here do not constitute CTC operations", the claim was nevertheless remanded. The Labor Member's vigorous dissent agreed that the disputed work was not CTC, but stressed that it involved operation of switches and signals by means of levers from a central point, which had been so performed by telegraphers for over ten years, and thus was theirs to perform. (Emphasis supplied). Assumedly, had CTC been involved, which does not require operation by means of levers, no dissent would have been filed.

On the merits, we are not persuaded that recommendations in the last cited Awards, which remanded for "further negotiations", have had any

practical effect. The same issues continue to plague the Board, as witness the instant dispute in which we are faced with a 236 page Docket and a voluminous number of asserted precedents. Moreover, as pointed out above, both contesting Organizations are now properly before the Board. We are mandated, therefore, to resolve the issue.

The following cases are germane and bear materially upon the disputed work with which we are now concerned. Thus, in Award 8544 (McCoy) wherein the Telegraphers claimed the same disputed work, we held:

> "In the case before us it appears that the Carrier has contracted with the Dispatchers for this work to be performed by dispatchers when the CTC machines are located in dispatchers' offices. Since, under the authority of Awards Nos. 4452 and 4768, the work is not exclusively that of the Telegraphers under their Scope Rule, the contract with the Dispatchers is valid and does not violate the Agreement with the Telegraphers. The claim will therefore be denied."

Similarly in point is Award 8660 (Guthrie), which denied the Telegraphers' claims to precisely the same type of CTC work, finding "no provision in the Telegraphers Agreement or in past practice on this property which gives the telegraphers exclusive right to this work". Additionally, we held that "where the CTC control board is located in a dispatchers' office the dispatcher operates the board, and where it is located in a telegraph office it is operated by a telegrapher under the direction of the dispatcher".

Award 10303 (Mitchell), involving the Telegraphers and the identical CTC system, held precisely to the same effect, citing Awards 4452, 8544 and 8660, supra. Here, the Telegraphers claim was again denied.

To the same effect, and on precisely the same issue, see Award 11161 (Moore), which denied the Telegraphers claim, citing Awards 4452, 4768, 8544, 8660 and 10303, and stating:

> "We agree with those which hold that the Agreement was not violated."

Also to the same effect, see Awards 11821 (Christian), 14341 and 14342 (Perelson), 19068 (Dorsey), 19594 (Brent) and 19767 (Rubenstein).

We conclude, therefore, that where, as here, the CTC control board is located in the dispatcher's office the assignment of the disputed work to dispatchers is in accord with the Train Dispatchers Agreement and is not in violation of the Telegraphers' Agreement. We concur with those who hold

"that the Agreement was not violated."

Accordingly, on the basis of the entire record, on the above findings and conclusions, and in view of the controlling weight of authority, we are compelled to deny this 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.