NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21876
THIRD DIVISION Docket Number CL-21308

Nicholas H. Zumas, Referee

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

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it established Mobile Agent Route SC-7, base station Columbia, South Carolina, with a 10:00 AM starting time as set forth in Vacancy Bulletin No. 1, dated February 4, 1974, and placed the successful bidder, Mr. R. W. Sharpe, on the 6-day per week monthly rated Mobile Agent position effective February 15, 1974.

Since the agreement was not violated, Mr. Sharpe is not entitled to the 2 hours pay at the time and one-half rate for him, his relief and/or successor, commencing Monday, February 25, 1974, as claimed for and in behalf of Mr. Sharpe by the Clerks' Organization.

OPINION OF BOARD: The Organization filed and progressed a claim on this property alleging a violation of Rule E-4(b), STARTING TIME, when Carrier established a Mobile Agent Route with a 10:00 a.m. starting time. This dispute was referred to this Board by Carrier.

Rule E-4 (b) provides:

> "At stations where only one employee is employed, the hours of service will begin between 6:00 a.m. and 8:00 a.m., or between 6:00 p.m. and 8:00 p.m.."

The essential facts are not in dispute: On April 1, 1971 the parties entered into an agreement styled "MASTER IMPLEMENTING AGREEMENT COVERING ESTABLISHMENT OF MOBILE AGENCY ROUTES." It was later incorporated into the schedule agreement (effective May 1, 1973) as ADDENDUM N-8. In accordance with the provisions of that agreement Carrier notified the General Chairman that Route SC-7 would be established and subsequently advertised the position. Claimant was the successful bidder.

When the position was established, Carrier, as specified in the bulletin, put the mobile agent on duty at the base station, Columbia, S.C., beginning at 10:00 a.m. He was scheduled to depart Columbia at 11:00 a.m., make his rounds in a station wagon provided by Carrier, return to the base station at approximately 6:00 p.m., and go off duty at 7:00 p.m. The station wagon provided Claimant has no typewriter or other office equipment. It has a two-way radio for use in communicating with employes at the base station, train dispatchers and train crews. The paper work is performed at the base station with the particular assistance from two clerks (also with 10:00 a.m. starting times). All of the mobile agent's records are kept at the base station. In addition to the mobile agent, there were 17 employes at the Columbia base station covered by the agreement between Carrier and the Organization during the period involved.

The Organization takes the position that the mobile agency "is a one-man operation within itself" and as such the number of other employes at the base station is not relevant in determining the proper starting time of the mobile agent. In support of its position the Organization relies on two awards between these parties and asserts that they must be followed. In view of their brevity we shall quote the awards in full.

Award No. 69 of Public Law Board No. 549 reads:

"STATEMENT OF CLAIM:

Carrier violated the Agreement, effective Monday, April 17, 1972, when it established Mobile Agent route VA-3, base station Culpeper, Virginia to a 9:00 a.m., starting time without allowing Claimant Bowers 1 hours' pay, for each date, at the time and one-half rate.

For this violation, the Carrier shall now compensate Claimant Bowers by paying him 1 hours' pay, at the time and one-half rate of his position, for Monday, April 17, 1972, and continuing thereafter, for the same amount, for claimant, his relief and/or successor, for each date the violation continues.

OPINION OF BOARD:

Rule 7(b) is controlling in this case:

'At the stations where only one employe is employed, the hours of service will begin between 6:00 a.m. and 8:00 a.m., or between 6:00 p.m., and 8:00 p.m.'

"From the presentations we find that effective April 17, 1972, the one-man stations at Calverton, Remington, Rapidan and Warrenton, Virginia, with each respective starting time between 6:00 a.m., and 8:00 a.m., were placed in Mobile Agent Route, VA-3, with Culpeper, Virginia, another one-man station, designated the base station.

Carrier contends that Culpeper is a 'one-shift' station where two covered employees are employed, the Base Agent and the Mobile Agent (Claimant). We find the Carrier's argument is deficient because we are convinced that Mobile Agent performs his day's work in the region assigned to his route and the incidental duties he may perform at the base station does not create a two-employee station.

AWARD:

Claim sustained."

Award No. 70 of Public Law Board No. 549 reads:

"STATEMENT OF CLAIM:

Carrier violated the terms of the Agreement when it assigned a lunch hour to the Agent-Telegraphers at Blackville, Greenwood and Langley, South Carolina, offices where more than one shift is worked.

For these violations, the Carrier shall now compensate Claimants J. T. Hutto, Agent-Telegrapher, Blackville, S. C., J. M. Fisher, Agent-Telegrapher, Greenwood, S. C., and T. G. Rish, Agent-Telegrapher, Langley, S. C., by paying each of them 1 hour, at the time and one-half rate of their respective position, for Monday, July 10, 1972, and shall pay each claimant, their relief and/or successor the same for each subsequent work day that the violation continues.

OPINION OF BOARD:

Blackville, Greenwood and Langley, South Carolina, are one-man stations with a Mobile Agent Route originating at each location.

"Rule 8(a) is controlling in this case:

> 'Where but one shift is worked, employees will be allowed sixty consecutive minutes between 11:30 and 1:30 o'clock day or night, for meal. If not excused for the meal period within the agreed time limit, the employee will be paid one hour at time and one-half rate.'

This case is sufficiently similar to that handled by this Board as Award No. 69 (Case No. 70) to find it governing. We will deny the claim and reiterate that a Mobile Agent does not make a 'two-shift' or 'two-employee' office, to the contrary, a Mobile Agent is a one-man operation subject to the 'one-shift', one employee rules.

AWARD:

Claim denied."

The Organization strongly argues that the issue before this Board, as pertains to these parties, has been decided by Award No. 69, is supported by the rationale in Award No. 70, and the matter is now res adjudicata.

Carrier contends that Award No. 69 was erroneous and disagrees with the reasoning of Award No. 70. It further contends that the record clearly shows that at the time the dispute arose there were 18 employes, including Claimant, represented by this Organization; and the mobile agent (Claimant) cannot be separated from the work force at the base station to bring him within the restrictions of Rule E-4(b).

There is great reluctance by Boards of Arbitration to overturn prior awards on identical issues between the same parties. This reluctance is desirable and proper in this or any other industry in order to provide certainty and stability in the relationship between labor and management. It is for this reason that this Board has made

every effort to harmonize and reconcile Award No. 69 with the plain meaning and clear import of the MASTER IMPLEMENTING AGREEMENT COVERING ESTABLISHMENT OF MOBILE AGENCY ROUTES (ADDENDUM N-8) and Rule E-4(b). With all due deference to the distinguished author of Award No. 69, this Board is compelled to reach a different conclusion for the following reasons:

1. The definition of "station" as set forth in Rule E-4(b) is plain, simple and suffers no ambiguity: an established, immovable, physically ascertainable building or place that can be described with particularity and serves as an accommodation for passengers, freight or offices where employes perform their duties.

2. Even if the term "station", in this context, were considered to be ambiguous and unclear, we would attempt to determine its meaning by going back to what the parties intended it to mean at the time it was first negotiated and written into an agreement - in this case several decades ago. It would strain credulity to argue that the original drafters had contemplated a mobile agency concept as embodied in ADDENDUM N-8 and intended that a Mobile Agent was to be considered a one man "station."

3. Most compelling, however, is an examination of ADDENDUM N-8 itself:

> Section 1 (b) requires that the base station be "located on the same seniority district as the mobile agent."
> Section 1 (c) requires that the new Mobile Agent positions "will have designated base stations, which may be changed only by agreement between the parties, at locations where an employee subject to the Telegraphers' Agreement is regularly assigned, in addition to the mobile agent."
> Section 1 (f) gives the base station agent "at the location involved" preference if a mobile agent vacancy occurs.
> Section 2 provides for reimbursement for any expenses incurred by the mobile agent "in the event (he) is prevented from returning to his base station" as a result of inclement weather, automobile failure, etc.

Section 4 provides that there will be no reduction in the mobile agent's pay "on days when he performs his duties at the base station" because of inclement weather or vehicle unavailability.
Section 7 speaks of the necessity of establishing additional positions at the base station because of excessive work being brought back by the mobile agent, and the utilization of the existing work force if such work does not require the necessity of additional positions.

Thus it is seen that the position of the mobile agent and the work he performs is an inextricable, integrated part of the base station that cannot be separated simply by the fact that it is anticipated that the mobile agent will be "on the road" most of the time. The base station is an integral, essential part of the mobile agent position.

On the basis of the foregoing, the Board finds that Carrier did not violate the agreement with the Organization as alleged, and that Claimant is not entitled to the premium pay as claimed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

The Agreement was not violated.

A W A R D

Claim disposed of per findings herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.