NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23839
THIRD DIVISION Docket Number CL-22972

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8789) that:

1. Carrier violated the Agreement between the parties when, on February 23, 1978, it abolished the fully-covered Yard Master Clerk position at Crewe, Virginia held by R. N. Crannis, Jr., without discontinuance of the work thereof and placed those duties on a Section 4 and two Section 6 employes.

2. Carrier shall, as a result, be required to compensate R. N. Crannis, Jr., eight (8) hours each day Monday through Friday at the pro rata rate applicable to the abolished position, commencing February 23, 1978 and continuing until the violation is corrected.

3. Carrier shall further compensate R. N. Crannis, Jr., a two-hour call for each Saturday at the overtime rate of the abolished position, commencing February 23, 1978 and continuing until the position is restored.

OPINION OF BOARD: This claim deals with an asserted abolishment of a Yard-master Clerk position and a resultant distribution of duties as described in the statement of claim.

The record demonstrates that the complained of action took place during the time when the Carrier's operations were, to a great extent, suspended due to a work stoppage by the United Mine Workers - which directly affects the carrying of coal by this Employer.

A number of Awards have been cited by both parties to this dispute, and we have considered them at length.

Our particular attention has been invited to Award No. 85 of Public Law Board No. 1790; relied upon by the Employes.

With all due deference to the author of that Award, this Board is unable to conclude that said Award is responsive to the dispute submitted here in contemplation of the particular Scope Rule agreed upon by the parties. In fact, in a subsequent award of Public Law Board No. 2474 involving this same agreement and these same parties, Award No. 85 of PLB No. 1790 was characterized as "aberrant" and "controversial".

We are convinced that the logic expressed in Third Division Award No. 18609 is dispositive of the dispute in this case. There we said:

> "An examination of the language of the Agreement cited by the Organization as having been violated does not support the claim. First, there is no substance to the charge that the Scope Rule was violated in any way. Both positions involved are within the scope of the Agreement, and work may be properly assigned or reassigned to any position within its scope, even as here, where the Assistant Agent is excepted from some of the terms of the Agreement."

This position also finds support in Awards 23182, 19629, 4235 among others.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

LABOR MEMBER'S DISSENT
to
AWARD 23839, DOCKET CL-22972
(Referee J. Sickles)

The facts in Docket CL-22972 were not in dispute. The Carrier, on February 23, 1978, abolished a position fully covered by all of the rules of the Clerks' Agreement and assigned part of the duties of the abolished position to a semi-excepted employe. The Organization argued that this assignment of work violated the Scope Rule of the parties' agreement. The Carrier argued that the agreement did not restrict or prohibit the Carrier from assigning the work of the abolished position to occupants of partially excepted positions.

The issues and rules involved in Docket CL-22972 were identical to those involved in the dispute covered by Case No. 83, Award No. 85, Public Law Board No. 1790, involving the same parties. In that Award, Public Law Board 1790 sustained the claim of the Organization. That Award should have been followed here.

The Carrier argued that Award No. 85 was in error. This argument though, was more of an expression of dissatisfaction. This dissatisfaction with the Award and Carrier's attempt to have the Award upset did not make the Award less of an Award.

Award 85 should have been followed in the instant case on the basis of stare decisis. See for instance Awards 10911 (Boyd), 19258 (Devine), 20087 (Dorsey), 20374 (Bergman), 21651 (O'Brien), 21861 (Sickles), 21995 (Scearce), 22147 (Marx), 22155 (Wallace), and 22287 (Weiss). Award 23839 is in palpable error and requires dissent.

J. C. Fletcher, Labor Member

Date 4-21-87

CARRIER MEMBERS' REPLY TO

LABOR MEMBERS' DISSENT

TO

AWARD 23839, DOCKET CL-22972

REFEREE J. A. SICKLES

The Labor Members' dissent in this instance tells us that Award No. 85 of Public Law Board No. 1790 - since it involved the same parties - should have been blindly and religiously followed in "lemming" fashion.

What is overlooked is the fact that Award No. 85 of PLB 1790 completely ignored a line of precedential awards of this Board extending over a period of more than thirty (30) years. See Interpretation No. 1 to Award 3563, Award 3866, 3878, 4235, 7821, 9925, 13963, 15081, 18609, 19629, 23182.

In Award 15740, this Division said:

> "While this Board has always announced its strong attraction to the principle of stare decisis, it has never surrendered outright to such dogma.
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> * * * * * * * * * * *
>
> An earlier award by another referee, no matter how entitled it is to respected consideration, is not an expression emanating from the contracting parties. It is the opinion of another referee."

In this case Award 85 was properly characterized as "aberrant" and "controversial".

It was erroneous and properly disregarded in our Award 23839.

J. E. Mason

W. F. Euker

D. M. Lefkow

J. R. O'Connell

P. V. Varga