

BEFORE
PUBLIC LAW BOARD NO. 167

PARTIES TO DISPUTE:

Transportation-Communication Employees Union)	Award No. 5
)	Case No. 3
and)	TCU No. 4447
)	EL Item No. 377
Erie Lackawanna Railway Company)	
)	

STATEMENT OF CLAIM:

Claim of the General Committee of the Transportation-Communication Employees Union on the Erie-Lackawanna Railroad, that:

CLAIM I.

1. Carrier violated the parties' Agreement when on April 18, 1963, it declared the three trick positions at "IQ" Tower, Buffalo, New York abolished without in fact abolishing the work thereof, which work was unilaterally removed from the scope of the March 1, 1957 Agreement.
2. Carrier shall, because of the violation in (1) above, commencing April 18, 1963 and continuing thereafter until such violation is corrected, be required to compensate the following employees the amount specified, for each day the violation exists.
 - (a) All former regular assigned employees at "IQ" Tower listed in "Statement of Facts" for all wages lost and expenses incurred.
 - (b) Other employees displaced or affected as a result of the violation for all wages lost and expenses incurred, as provided in the Agreement.
3. Carrier shall allow a check of its records to ascertain the names and amounts due employees.

CLAIM II.

Claim No. 1

1. Carrier violated the parties' Agreement because on February 4, 1964, without negotiation or agreement, it abolished the second and third trick and relief operator-clerk positions at "EX" Office, Buffalo, New York, without abolishing the work thereof, part of which it consolidated with the positions in "F" Office (DL&W) East Buffalo, New York, and the remainder it assigned to outsiders at "BX" to perform.
2. Carrier shall, because of violation in (1) above, be required to compensate the following employees commencing February 4, 1964, and continuing thereafter until the violation is corrected, the amounts specified for each day the violation exists.

- (a) Mr. E. L. Akromas, Mr. E. F. Petrella and Mr. R. E. Beale, occupants of the abolished first trick, third trick and relief operator-clerk positions, respectively, or their successors, for a day's pay (eight hours) and expenses incurred each day suspended from their positions in addition to any wages otherwise paid to them.
3. In addition, Carrier shall compensate other displaced employees, Mr. T. J. McArthur, Mr. R. E. Moore and Mr. J. F. Driscoll for all wages lost and expenses incurred commencing February 4, 1964 and continuing thereafter until violation is corrected.
4. Carrier shall allow a check of its records to ascertain the names and amounts due employees.

Claim No. 2

1. Carrier violated the parties' Agreement because on February 4, 1964, it abolished the first trick monitor position "BX" Office, Buffalo, New York, without abolishing the work thereof which it unilaterally assigned to the first trick operator-clerk "BX" Office to perform.
2. Carrier shall, because of violation in (1) above, commencing February 4, 1964, and continuing thereafter until violation is corrected, be required to compensate Mr. J. D. Waterman, Jr., occupant of the abolished position, or his successor, for a day's wages and expenses incurred for each day suspended from his position.
3. In addition, Carrier shall compensate other displaced employees, Mr. W. H. Heather, Mr. W. H. Whitehead and Mr. P. J. Gilboy for all wages lost and expenses incurred beginning February 4, 1964 and continuing thereafter so long as violation exists.
4. Carrier shall allow a check of its records to ascertain the names and amounts due employees.

OPINION OF THE BOARD:

The arguments contained in the instant Docket are both voluminous and repetitious. In large part, this is due to the inclusion of inordinately lengthy and controversial correspondence. Nevertheless, the gist of the two claims involved herein, concerns the abolishment of certain positions at "IQ" Tower and "BX" Office, Buffalo, New York. In brief, the Organization alleged that these positions were abolished in violation of the effective agreement between the parties, without negotiation or agreement. In turn, the Carrier countered these assertions by reference to a number of documents which, in its version, authorized such action.

Thus, in order to adjudicate the validity of these claims, it is essential for us to initially review the scope and effect of these instruments.

On August 11, 1960, the Carrier notified the Organization of certain impending steps it planned subsequently to implement. The pertinent portion of such is hereinafter quoted:

"Supplementing and amending our letter of June 23, 1960, in which we gave you preliminary information concerning the positions which would be affected by merger, as covered in I.C.C. Finance Docket 20707, wish to advise that we now estimate that the force rearrangements due to merger which will result in rearrangement or displacement of employees represented by the Order of Railroad Telegraphers will be as follows:

- (a) "IQ" Tower, Erie-Buffalo will be abolished
- (b) Three (3) operator-clerk 7-day positions, Erie "BX" Buffalo, will be merged with 3 Operate-Clerk (sic) positions at DL&W, East Buffalo yard.

Thereafter, on September 11, 1961, an agreement was consummated between the parties, portions of which are herein noted:

"This agreement is made in connection with the merger of the Delaware, Lackawanna and Western Railroad Company and the Erie Railroad Company, hereinafter known as the Erie-Lackawanna Railroad Company, as authorized by Order of the Interstate Commission, as a condition of its approval of this transaction, imposed for the protection of the employees the so-called "New Orleans Union Passenger Terminal Conditions," which are implemented by conditions specifically provided herein.

It Is Hereby A-reed:

Article III

1. Any change in employment by reason of this merger contemplated by the carrier subsequent to the effective date of this agreement shall be subject to the procedures set forth in Sections 4 and 5 of the agreement of May, 1936, Washington, D.C. (hereinafter referred to as the "Washington Agreement").
2. The carrier's letter notice of August 11, 1960, copy attached, meets these requirements as to the rearrangement of forces by reason of this merger estimated at this time in the specific cases outlined in said letter notice. Organization may handle individual situations in accordance with Erie Rule 3 (e) and (d) or D. L. & W. Rule 12 (b).

The third document applicable herein, involves Section 4 and 5 of the Washington Agreement. Basically, Section 4 provides for written notice of any proposed

changes and Section 5 requires an agreement in the event employees are displaced or forces are rearranged.

Hence, the question presented in these claims is whether or not the letter of August 11, 1960 and the Agreement of September 11, 1961, conformed to the requirements of Section 4 and 5 of the Washington Agreement.

In claim No. 1 herein, the Organization complained of the Carrier's act in abolishing the three trick positions at "IQ" Tower. Thus, the focus of our analysis requires that we ascertain whether the Carrier complied with the preliminaries set forth in the Washington Agreement. Section 4, thereof, states that a written notice of the contemplated changes shall be mailed to the representatives as well as providing for other types of notices. In our view, the August 11, 1960 notice properly informed the Organization of the proposed abolishment of the "IQ" Tower.

Was there a compliance with Section 5 of the Washington Agreement? Section 2, Article III of the September 11, 1961 Agreement states that it "meets these requirements as to the rearrangement of forces by reason of this merger."

In the same vein, it is our conclusion that the requirements of the Washington Agreement have been similarly applied to claim No. 2, directed at the abolishment of positions at "BX" Office

However, the Organization further argues that the Carrier did negotiate subsequent agreements with reference to six of the twelve contemplated changes listed in its August 11, 1960 notice. This, the Carrier readily admits, though the basis for such agreements was not the reason advanced by the Organization, namely, conformity with Section 5 of the Washington Agreement. Each of the six agreements entered into with the Organization relevant to the various locations listed in the August 11, 1960 notice, was executed pursuant to the last sentence of Section 2, Article III of the September 11, 1961 agreement. This section provided for handling of individual situations pursuant to Erie Rule 3 (c) and (d) or D.L. & W. Rule 12 (b). In the instant dispute, the Organization, admittedly, had not requested such disposition.

In summary, we believe that after a painstaking review of the contentions advanced by both parties, the Carrier has conformed to the conditions imposed by the I.C.C. and the Washington Agreement. However, it is also our view that the parties now should approach this problem with greater flexibility and demonstrate a concerted degree of reasonableness in their positions. While we have concluded that the effective agreement between the parties was not violated, we would strongly urge the parties to attempt a reconciliation of their remaining differences, if any, and to take whatever corrective measures appear feasible, by invoking the latter part of Section 2, Article III of the September 11, 1961 agreement, to wit, Erie Rule 3 (c) and (d) or D.L. & W. Rule 12 (b).

FINDINGS:

Upon the entire record and all the evidence, after hearing, this Board finds that the captioned parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement; that the parties have had due notice of these proceedings; and that this Board has jurisdiction over the parties and the dispute involved herein.

That the Agreement was not violated.

Award

Claims denied per opinion.

Public Law Board No. 167

/s/Murray M. Rohman
Murray M. Rohman, Chairman
Neutral Member

/s/H. D. Smith
H. D. Smith, Employee Member

/s/C. H. Zimmerman
C. H. Zimmerman, Carrier Member

Dated: Cleveland, Ohio
September 18, 1968