

Public Law Board 4115

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Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
and Station Employees

and

The River Terminal Railway Company
-----X

Case No. 3

Award No. 3

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties dated April 29, 1986, and has jurisdiction of the parties and of the subject matter; and that the parties were given due notice of this hearing.

Statement of Claim

1. Carrier violated the effective Clerks' Agreement when on March 6, 7, 11, 13 and 15, 1985, it required and/or permitted yardmasters -- employees not covered thereby -- to fill short vacancies and perform the duties of the Chief Crew Dispatcher in the absence of the regular incumbent, which work is reserved exclusively to employees fully covered by said agreement.

2. Carrier shall now compensate Mr. J. Jordan eight (8) hours' pay at the time and one-half rate of the position of Chief Crew Dispatcher for each of the above referred to dates.

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Applicable Agreement Provisions

RULE 1

SCOPE

(A) These rules shall govern the hours of service and working conditions of all employees engaged in the work of the draft or class of clerical, office, station and storehouse employees. Positions or 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 or work from the application of these rules, nor shall any officer or employee not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties.

SUPPLEMENT NO. 14

WHEREAS the parties entered into a Memorandum of Agreement, dated December 5, 1974, effective January 1, 1975, which exempts the position of Chief Crew Dispatcher from the basic rules of the working Agreement and;

WHEREAS the position of Chief Crew Dispatcher is a 7 day position for which rest day relief is provided by an employee fully covered by all the rules of said working Agreement;

Therefore, it is mutually agreed that when a short vacancy or vacation vacancy occurs on the position of Chief Crew Dispatcher or the relief position thereof, it will be filled by an employee fully covered by all the rules of our Agreement in accordance with the provisions thereof.

SUPPLEMENT NO. 15

It is mutually agreed that effective January 1, 1975 the position of Chief Crew Dispatcher will be totally exempted from all the provisions of the Agreement, dated March 18, 1953, as amended, between the Carrier and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees covering employees engaged in the work of the craft or class of Clerical, Office, Station and Storehouse employees.

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When filling the above named position, it will be filled by appointment by the Carrier, however, River Terminal Railway employees covered by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees Agreement will be given preference over River Terminal Railway employees not covered by said agreement.

Facts

Carrier is owned by LTV Corporation, which also owns the Cuyahoga Valley Railway Company (CV), also located in Cleveland. The incumbent Chief Crew Dispatcher, Mr. Robert Nester, had been employed by the CV and on the dates claimed the Carrier directed Mr. Nester to perform similar duties for the CV at a distant location for all or part of the day. No employee was assigned to the work at River Terminal Railway Company in Mr. Nester's absence.

Because the job of Crew Dispatcher requires the receipt of telephone calls throughout the day, Carrier arranged to have the calls forwarded from the Crew Dispatcher's office to a distant office which was manned by the General Yardmaster. During the days in question General Yardmasters, a different craft or class, accepted and recorded calls from train and engine crews marking off duty and marking up for return to duty. In one instance, the actual logs maintained by the Crew Dispatcher were written upon by a Yardmaster.

Position of the Parties

It is the position of the Organization that the work

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performed by General Yardmasters on the dates claimed was work which is an integral and routine part of the duties of the Chief Crew Dispatcher and that since the position was vacant for the time he was otherwise assigned, it should have been filled pursuant to applicable agreement rules.

The Carrier states that no short vacancy existed in the Chief Crew Dispatcher assignment; that even if one existed the Carrier was under no obligation to fill the short vacancy; and finally, that answering the telephone and taking a message is not "clerical work" solely reserved to Clerks under their agreement.

Discussion

It is clear that under the agreement between the parties the Carrier could have blanked the position for the part of a day that the incumbent Chief Crew Dispatcher was not available. It is also clear that the Carrier, instead of forwarding the calls to the General Yardmaster, could have forwarded the calls to the Chief Crew Dispatcher at his distant location or alternatively could have had the Chief Crew Dispatcher utilize a telephone answering machine to accept his calls. Despite the Carrier's claim that it has unlimited authority to assign the answering of telephones and the taking of messages to any employee, the question raised by this claim is whether the Carrier has authority to assign the work of the Chief Crew Dispatcher on a temporary basis to General Yardmasters without violating the agreement it has with the Clerks' Organization. It is this

Board's conclusion that it does not.

The language of the scope clause of the agreement between the parties is quite clear. It limits work within the scope of the agreement to clerks. The parties made an exception to the rules as to how the employee who was to do the work of Chief Crew Dispatcher was to be chosen, but when the incumbent of that position is not available for work, the work is done by members of the clerk craft or class. The exception does not go as far as the Carrier contends -- it exempts the choice of an incumbent Chief Crew Dispatcher, it does not exempt the work from the scope of the agreement.

The Carrier has not contended that when the Chief Crew Dispatcher goes on vacation, the work can be done by whomever the Carrier assigns the responsibility, but only that for part of a day it can so assign the work. It does not appear to this Board that the scope clause allows such discretion without penalty. When the Carrier assigned the work temporarily to a different class or craft it placed itself at risk. It must now pay the price.

Carrier further contends that the damages sought by the Organization are excessive. It states that there is no right to impose a penalty absent a contractual dictate. This Board is not establishing a penalty. Rather, since the carrier allowed the position to be temporarily vacant and assigned the work to another craft or class, the member of the craft or class who should have received the work assignment is to be compensated as

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though he had received that assignment. This is not a penalty, but the restoration of pre-existing rights.

Award

The claim is sustained.

Robert O. Harris
Robert O. Harris, Chairman

G. T. Creedon
Carrier Member
[Concur / Dissent]

J. C. Campbell
Organization Member
[Concur / ~~Dissent~~]