

PUBLIC LAW BOARD NO. 7661

CASE NO. 44  
AWARD NO. 44

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

Union Pacific Railroad Company

Claimants: B. Stroup, T. Wilkerson, J. Lundry and J. Kleist

---

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier abolished the Claimants’ semi-truck positions effective close of business September 9 and 10, 2019 and failed to bulletin four (4) semi-truck driver positions beginning September 11, 2019 and continuing (System File A-1920U-005/1730146 UPS).
  2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now ‘... immediately re-bulletin the four (4) semi-truck positions that it previously abolished effective at the close of business September 9&10, 2019. \*\*\*’ and Claimants B. Stroup, T. Wilkerson, J. Lundry and J. Kleist shall now each be ‘\*\*\* allowed \$5.00 a day for each weekday the Carrier fails to bulletin the subject positions beginning September 11, 2019 and continuing.’ (Employees’ Exhibit ‘A-1’).”
- 

FINDINGS:

The Carrier or Carriers and the Employee or Employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7661 has jurisdiction over the parties and the dispute involved herein.

The Claimants have all established and maintain seniority in the Carrier’s Maintenance of Way and Structures Department and held positions as system semitruck drivers. The Claimants performed loading, unloading, and transporting Maintenance of Way (“MOW”) material and equipment.

The Carrier abolished the four Claimants’ system semi-truck driver positions effective at the end of shift on September 9 and 10, 2019. Beginning on September 11, 2019, the Carrier assigned daily system semi-truck driver work to outside contractors for greater than 30 days.

In a letter dated November 5, 2019, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated December 30, 2019. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier abolished the Claimants' positions despite the fact that the work of transporting MOW material and equipment still needed to be performed. Thus, the Carrier was required to bulletin the positions pursuant to Rule 20 of the Agreement:

**RULE 20 - BULLETINING POSITIONS – VACANCIES**

- (a) All new positions or vacancies that are to be filled, including temporary vacancies of thirty (30) calendar days or more duration created by a medical leave of absence of the regular occupant of a position and temporary positions connected thereto, will be bulletined to all employees holding seniority on the district in the class in which the new position is created or vacancy occurs.

New positions will be bulletined as much in advance of their establishment as possible but in no event later than seven (7) calendar days after they are established.

Vacancies, including temporary vacancies as defined above, will be bulletined as promptly as possible but in no event later than seven (7) days after they occur; provided, however, that temporary vacancies, which start out on an indefinite basis, will be bulletined as soon as it is known they will exist for thirty (30) calendar days or more....

The Organization contends that the work that was removed from the MOW craft was reassigned to those outside the Agreement. The Organization contends that the Carrier failed to properly bulletin the disputed system semitruck driver positions, as vacancies were created that needed to be filled.

The Organization contends that the Carrier does not dispute that it utilized contractor semi-trucks to transport MOW material and equipment for more than 30 days and that this was work performed by the Claimants prior to the Carrier abolishing their positions. So long as the work continued for 30 days or more, the Carrier was required to bulletin the vacancies.

The Organization contends that this claim is not duplicative of any other claim, as it does not seek to compensate the Claimants for a lost work opportunity but demands that the Carrier be directed to bulletin the vacancies. In addition, the Carrier raised the argument that this claim was duplicative of another for the first time in its presentation to this Board. Since it was not raised during the on-property discussion between the parties, the argument was waived by the Carrier.

The Carrier contends that this claim is duplicative of the claim in Carrier's File No. 1730145, as they both address the same facts and the same alleged loss of work opportunity as a result of the abolishment of the claimed positions. Thus, the claims should be dismissed.

The Carrier contends that the Organization has failed to show a violation of the Agreement by the abolishment of nine semi-truck driver positions. The Carrier contends that it has the management right to bulletin and abolish positions as the workload requires. The Carrier maintains the discretion to determine what positions are needed as work requirements and equipment change in the normal ebb and flow of operations.


The Carrier contends that Rule 20 has no application here, as it does not address abolishment of positions. The Carrier further contends that the abolishment bulletin was posted in compliance with Rule 21 allowing the Claimants proper displacement rights, which they exercised.

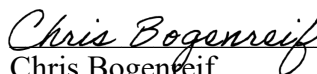
The Board has reviewed the procedural argument raised by the Carrier, and we find it to be without merit. While the two claims arise out of the same events, they cite different provisions of the Agreement and seek different remedies. This claim asserts that the positions were improperly abolished and not bulletined and the other asserts that the Claimants' work was improperly performed by outside contractors. The Carrier has not shown that the claim filed by the Organization was in any manner duplicative or that the issues raised therein were previously resolved in arbitration.


However, we find that the Organization has failed to meet its burden of proving that the Agreement has been violated. The record before us fails to demonstrate that a new position was created or that a vacancy occurred that was not bulletined in accordance with Rule 20. The Claimants' positions were abolished pursuant to the Carrier's right to manage its operations, so long as it complies with the provisions of the Agreement. The Carrier does not deny that it used outside contractors, but it asserts that those arrangements preceded and continued after the abolishment of the Claimants' positions.

AWARD:

Claim denied.

  
Kathryn A. VanDagens  
Neutral Referee

  
Chris Bogenreif  
Carrier Member

  
John Schlismann  
Employee Member

Dated: 02/15/2024