

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { J. B. Goclowski, et. al., Petitioners
{
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

The issue involved in this submission is as follows: Did the alleged signatory representatives of Penn Central Transportation Co. and Transport Workers Union, AFL-CIO have authority, by virtue of the then existing and recognized collective bargaining agreements, to enter into the alleged Agreement dated November 1, 1972?

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Prior to November 13, 1972 the Claimants in this case were employed by the Carrier but assigned to a facility known as the Eastbound Repair Shop, located at Altoona, Pa. At some point in time prior to that date, the Carrier had decided to alter its operations, such decision affecting the aforementioned Shop as well as other facilities. Discussions were held with the Transport Workers Union of America (hereafter, Organization), which is the authorized representative of the Claimants as well as other employees in the class and craft. As a result of such discussions, an Agreement was reached which set out the Carrier's planned action and the parties' (Carrier and Organization) agreed-upon placement of the employees who would be affected:

"AGREEMENT DATED NOVEMBER 1, 1972 BETWEEN THE PENN CENTRAL
TRANSPORTATION COMPANY, DEBTOR AND THE TRANSPORT WORKERS
UNION, AFL-CIO

WHEREAS, the Company, on November 13, 1972, will close the Allegheny Division car repair facility at Eastbound Car Shop, Altoona and transfer the day-to-day work to the Westbound Shop; and,

"WHEREAS, this action will result in a surplus of approximately 20 carmen on the involved seniority roster; and

WHEREAS, the Company, on or after November 13, 1972 intends to utilize the said Eastbound Repair facility for programmed car repair work under the jurisdiction of the Altoona Heavy Repair Shops.

THEREFORE, IT IS AGREED:

1. On November 13, 1972, the 20 surplus carmen will be transferred into the Altoona Heavy Repair Shop Seniority District in accordance with the Implementing Agreement of May 31, 1970.
2. Effective November 13, 1972, the territory of the former Eastbound Repair Shop will become part of the Altoona Heavy Repair Shop Seniority District."

The document was executed by duly authorized representatives of the Carrier and by the President of Local 2017 of the Organization as well as the Vice President-Director of the Organization's Railroad Division.

The Agreement essentially provided the opportunity for the employees affected by the Carrier's November 13, 1972, action -- including the Claimants -- to file for positions at the "Altoona Heavy Repair Shop" which, according to the Carrier, would be located in the same facility as did the former Eastbound Repair Shop, but would perform substantially different work. The Claimants chose not to accept such positions; as scheduled, the Claimant's former jobs were abolished and identical jobs were established at the "Westbound Car Shop", to which they successfully bid; their seniority was to be established in the Seniority District for that facility.

The Claimants' brought legal action against both the Carrier and Organization contending, inter alia, they were without authority under the terms of the collective bargaining agreement to consummate the November 1, 1972 Agreement as they did. By Opinion dated December 30, 1977, the Third Circuit Court of Appeals for the United States affirmed a lower court's judgment that the question of whether or not the parties had authority to make the November 1, 1972 Agreement was a "minor dispute" as defined by the Railway Labor Act and, thus, was a subject properly resolved through the dispute resolution mechanism of that Act. Consequently, this matter is brought before this Board.

Essentially, the Claimants assert that the parties to the November 1, 1972 Agreement lacked contractual authority to execute such an agreement. The Carrier points to Rule 3-B-2, which was part of the collective bargaining agreement, dated November 1, 1970, and in effect at the time of the events germane to this dispute for support in its contention that the Agreement was properly executed:

"No changes or modifications shall be made in existing seniority districts of a craft or class, nor shall any

"roster be combined or divided unless otherwise agreed to, in writing, between the Director-Labor Relations and the Director of Railroad Division. Where the limits of a Division are changed, seniority districts and rosters of the employees affected shall be adjusted by agreement, in writing, between the Director-Labor Relations and the Director of Railroad Division."

The Claimants contend that any such change or modification requires the participation of other Local Organization officials and, historically, has been voted on by the affected membership. In response to this claim, the Carrier brings attention to the provisions of this same Rule as it existed prior to July 1949, when the current Rule, as set out hereinbefore, was modified to its current status:

"3-B-2. No change will be made in existing seniority districts unless requested by 66 2/3% of the class in each seniority district affected. This does not apply when the limits of a Division are changed. Where the limits of a Division are changed, seniority districts of the employees affected will be as agreed upon by the interested General Manager or General Managers and the Regional Chairman or Regional Chairmen (Works Manager and General Chairman at Altoona Works), and the interested Local Grievance Committee or Committees."

It is a well established principle, long adhered to by this Board, that except where a provision of the collective bargaining agreement is unclear or ambiguous, or where it can be demonstrated that a long established past practice has prevailed in the absence of such contractual language, then a contract provision is deemed controlling. Here, Rule 3-B-2 is given to no other reasonable interpretation than that the "Director-Labor Relations" (for the Carrier) and the "Director of Railroad Division" (for the Organization) have been empowered to act as agents for the Carrier and represented employees, whose relationship is controlled by the collective bargaining agreement. This conclusion is strengthened when the provisions of the former Rule 3-B-2 are considered; it is this earlier version upon which the Claimants predicate one of their contentions, i.e. that the parties to the November 1, 1972 Agreement were obliged to place the matter -- as a proposal -- before the employees who would be affected by its execution. The fact that Rule 3-B-2 was in effect on November 1, 1972 empowering, as it did, the individuals heretofore mentioned to make such agreement, leads to the obvious conclusion that the membership of the Organization agreed to alter the Rule to forego the vote "by 66 2/3% of the class in each seniority district affected" in favor of permitting its representative to consummate any such change.

While the scope of the claim set forth in this matter as a whole is extensive, the threshold question before this Board is whether or not the parties to the Agreement were within the authority available to them under the Agreement effect the November 1, 1972 Agreement. If this Board determines in the affirmative on that point, then any further questions are made moot. We are satisfied that the parties were so empowered and that consideration of other aspects of this dispute by this Board is inappropriate.

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Award No. 8394
Docket No. 7791-I
2-CR-I-'80

A W A R D

Claim is denied as set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois. this 23rd day of July, 1980.