Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13876
Docket No. 13728
06-2-04-2-4

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (National Conference of Firemen and Oilers
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"1. On November 1, through November 30, a claim was filed at Corbin Locomotive Shop, Corbin, Kentucky by the employees claiming 1,444 hours at the time and one-half rate divided among 31 named Claimants divided by 46.5 hours each. Those Claimants are identified on Attachment 'A'.

2. That accordingly all Firemen and Oilers who were listed on Attachment 'A' be compensated for the Carrier's improper application of the above mentioned Agreement."

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.

This is a contract interpretation case brought by the Organization arguing that the language is clear on its face and must be applied as it was written. Paragraph 2 of the December 22, 1997 amendment to CSXT Labor Agreement No. 17-32-92 dated February 20, 1992 and commonly referred to as the "Fuel Truck Agreement," states in pertinent part:

> "The parties further agree that the number of F&O positions assigned in the Locomotive Department at any location where fuel truck(s) fuel locomotives . . . will not be reduced and vacancies will be filled while the truck(s) are assigned . . . ."

In this instance, the Carrier assigned a fuel truck to fuel locomotives at Corbin, Kentucky, and 40 Firemen and Oilers were assigned to that location. According to the December 18, 2001 claim, the Carrier had nine vacancies at Corbin which it did not fill. The claim alleges that the Carrier violated the Agreement, supra, because there were less than 40 positions. Because the language is clear that positions assigned ". . . will not be reduced and vacancies will be filled . . . " the Organization argues that the claim is proper.

The Carrier argued that the number of positions at Corbin has remained at 40 and in fact, 16 new positions were added to obtain that required number. It argues that it complied with the negotiated language in that it has not reduced the number of positions nor allowed vacancies. It rejects the Organization's argument that all vacancies must be filled. It points out that some named Claimants are on vacation, some are in promoted status and employees that might be absent due to sickness or voluntary leave are covered under other Rules, such as Rule 27 or the National Vacation Agreement, Article 12(b). It denies a violation of Paragraph 2.

The crux of this dispute is the language that ". . . positions assigned . . . will not be reduced and vacancies will be filled . . . ." The Organization contends that vacancies were not being filled and the language must be followed. The Carrier argues that these are temporary vacancies for which work might not even be available and covered by Rule 27 – BULLETIN RULE of the parties' Agreement. It argues that one must give meaning and intent to the language negotiated within the framework of all Agreements.

As in all contract interpretation disputes, the initial question remains the same. Is the language clear and concise? If it is shown by the Organization to be clear and unambiguous contract language, then it has met its burden of proof.

Standing alone, the one specific sentence in Paragraph 2 reading in part that, ". . . vacancies will be filled . . ." can be consistent with the Organization's position that on any day, the Carrier must maintain 40 assigned employees. However, the Carrier effectively rebutted the Organization's points in its letter dated November 17, 2003, which, after careful review, we hold to be proper. Therefore, another reasonable explanation is that the language of not reducing forces and filling vacancies refers to actual positions and not to the number of assigned employees on any given day.

Consideration of all the various components of both Paragraph 2 and other sections of the Fuel Truck Agreement and its amendments, as well as the Schedule Agreement suggests that the language is not meant to refer to day-to-day vacancies. The language appearing in Section 3 of the Addendum to CSXT Labor Agreement No. 17-32-92 indicates that if positions are reduced, the employees effected would be entitled to protection under Article I of the September 25, 1964 National Agreement, following a joint check of available work. Evidence of record supports this outcome.

The Carrier also noted on the property that Rule 27 governs the bulletining of vacancies. It argued without rebuttal that it complies with the long-standing manner of handling absences and that nothing in the Rule ". . . limits the blanking of vacancies to five (5) days." The Carrier also noted that numerous other Agreements and Rules permit the Carrier to blank jobs when an employee is off work, rather than force the Carrier to fill all 40 vacancies all the time. It pointed directly to:

> "Article 12(b) of the National Vacation Agreement, Section 13 of the National Supplemental Sickness Benefit Agreement, Rule 19 (Filling Vacancies Or Doing Other Class of Work), Rule 30 (Bereavement Leave), Rule 31 (Personal Leave), the Incidental/Simple Task Rule . . . in situations in which an employee is absent . . . ."

On the property, the Carrier denied the application of the language to hold as the Organization argued. Consideration of the language does not show that it was written to be interpreted as the Organization argues. In fact, there is no evidence that since its adoption it has been applied in the manner argued. Further, there is no reason in the language of the Fuel Truck Agreement to believe that it was meant to be applied day by day to all vacancies. Nor is there reason upon full review to consider that all other Agreement language relating to vacations or sickness would be overridden by the sentence contained in Paragraph 2.

After careful consideration of the on-property record, the language of the Fuel Truck Agreement, all other Agreements argued on the property and the numerous Awards presented by both parties to this dispute, we are compelled to deny the claim. We believe that Second Division Award 12928 between the parties to this dispute is on point holding in part that if it were the intent of the parties to force fill positions:

> ". . . we would expect that understanding to be spelled out unequivocally, given the clear limitation it imposes on Carrier's historical right to direct the workforce and determine the work to be performed."

It is significant that there is no language explicitly requiring day-to-day vacancies to be filled. It is significant that if one considered Paragraph 2 to be a must fill provision, then other Agreement language related to illness or vacation would be rendered inapplicable. It is similarly significant that if the Board accepted Paragraph 2 as the Organization argues, it would tend to undermine the meaning of other provisions of the same Agreement, such as Section 3 on protective benefits.

The Board will not draw from the express language of one sentence a mandatory construction that would alter several viable provisions of the Schedule Agreement and National Agreements. Had the parties wished this outcome, they would have crafted a far more clear and definitive directive. As it stands before the Board, we are compelled to find that it was not their intent by history or language. In the final analysis, the Carrier has maintained the appropriate number of positions required by the Agreement and this Award does not diminish the Agreement's requirement to maintain assigned positions.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of April 2006.