

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

The Committee of Local Union No. 784 are submitting a claim in accord with Rule No. 4-P-1(a) and (i) of the Agreement between the Consolidated Rail Corporation and the Communications Department employees of Conrail being represented by the I.B.E.W. organization.

On the Conrail property (former N.Y.C. Southern District) the Yost to North Vernon Branch, the operational jurisdiction and all facilities have been transferred from the Southern Region to the Western Region between Yost M.P. 57.5 and Anderson, Indiana M.P. 165.4.

By Agreement all the I.B.E.W. Communications maintenance (Telephones, Pole Line and Radio) work on the above described territory has been the past work of the I.B.E.W. Communications Department workers of Seniority Districts No. 7 and No. 13 of the Southern Region of Conrail. Any changes contrary to the Agreements are in violation of said Agreements.

The Agreement entered the 11th day of March, 1976 - Rule I - A; "The existing seniority districts and Rosters for employees in the electric traction and Communications departments will remain in effect upon conveyance." Other Rules of this Agreement to be considered.

The Agreement made the 21st day of September, 1979 - Rule No. 1; "All existing Radio Maintainer Seniority rosters shall be dovetailed into a single Conrail system roster. Prior rights shall be maintained to positions headquartered within the territory of a prior right district. In establishing this roster the principle of the March 11, 1976 Implementing Agreement shall be followed."

The May 1, 1979 Agreement - Rule No. 3-B-2 reads; "No change will be made in existing seniority districts except by agreement between the Senior Director-Labor Relations and the interested General Chairman."

Therefore, under the criteria of the aforementioned rule violations by the Consolidated Rail Corporation (Conrail) the I.B.E.W. Communications Department employees of Seniority Districts No. 7 and 13 submit the names of the following Claimants:

District Linemen - D. M. Padgett, R. M. Kizer and
R. M. Griffith
Cable Splicer - R. L. Hill
T&T Maintainer - W. Kennett, Jr.
Radio Maintainers - R. M. Dudley, J. M. Williams
and D. J. Olden
Gang Linemen - J. E. Fyffe and J. C. Fisher

The above listed Claimants to be compensated on an equitable basis for any and all Communications service and maintenance work on the Yost to Anderson, Indiana territory removed from these employees of Seniority Districts No. 7 and 13. This claim to be retroactive to March 15, 1981.

This claim submitted on behalf of the above named Claimants and members of Local 784.

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 employees 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 waived right of appearance at hearing thereon.

Claimants are members of Carrier's Communications Seniority Districts No. 7 and No. 13 of Carrier's Southern Region.

Effective May 1, 1975, Carrier transferred operational jurisdiction of all facilities between Yost Milepost 57.5 and Anderson, Indiana Milepost 165.4 from its Southern Region to its Western Region.

Pursuant to the March 11, 1976 Implementing Agreement, as well as Rule 3-B-2 of the May 1, 1979 Agreement, and Rule 1 of September 21, 1979 Agreement, Claimants are entitled to maintain seniority in the existing seniority districts on the date of conveyance to Conrail unless changed "... by agreement between the Senior Director-Labor Relations and the interested General Chairman."

According to the record, no communications work was performed in the disputed area between 1977 and 1981.

In August of 1981, operational control was returned to the Southern Region from the Western Region.

On April 30, 1981, Organization filed a Claim alleging that Carrier improperly assigned Claimants' work to members of Communication Department Seniority Districts No. 4 and No. 10 in violation of the following Rules:

"March 11, 1976 Agreement

* * *

Rule I-A:

The existing seniority districts and rosters for employees in the electric traction and Communication department will remain in effect upon conveyance.

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Rule II-D

The term 'prior seniority district' as used in this agreement refers to the point, location, division or territory covered by the employee's prior seniority roster."

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"September 21, 1979 Agreement

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Rule No. 1

The existing seniority districts and Rosters shall be dovetailed into a single Conrail system roster. Prior rights shall be maintained to positions headquartered within the territory of a prior right district. In establishing this roster the principle of the March 11, 1976 Implementing Agreement shall be followed."

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"The System Federation No. 54 Agreement

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Appendix No. 6

Agreement covering Electrical Workers in the Communications Department Effective January 1, 1948 with revisions to November 1, 1953 etc...
Seniority Districts

Seniority districts shall be established and maintained as follows:

For: Licensed Radio Maintainers
Maintainers-Installers
Asst. Maintainers

District No. 4 - Line West including C.U.T.,
I.H.B. and C.R.&I. (C.J.)
Railroad

District No. 7 - Cleveland, Cincinnati,
Chicago & St. Louis Ry.,
(including P.&E. Ry. and
L.&J.B. & RR CO.)

For: Cable Splicers
District Linemen
Asst. Cable Splicers
Groundmen

District No. 10 - Line West including C.U.T.,
I.H.B. and C.R.&I. (C.J.)
Railroad

District No. 13 - Cleveland, Cincinnati,
Chicago & St. Louis Ry.,
(including P.&E. Ry. and
L&J.B. & RR Co.)

Note: Seniority Districts No. 4 and 10 are
primarily on the Western Region of
Conrail.

Seniority Districts No. 7 and 13 are
primarily on the Southern Region of
Conrail."

Carrier contends that Organization's Claim is vaguely worded and was untimely filed as required by Rule 4-P-1(a) of the controlling Agreement. Therefore, according to Carrier, the Claim is procedurally defective and should be rejected. In support of this contention, Carrier argues that the gravamen of the controversy is the transfer of the so-called Michigan branch of Carrier's Western Region, an event which occurred approximately six (6) years prior to Organization's filing of the instant Claim. Accordingly, Carrier argues that the origin of the Claim occurred upon Carrier's transfer of operational duties in 1975; and said Claim, therefore, is untimely by approximately six (6) years.

Carrier next argues, as a procedural objection, that Organization's Claim contains a paucity of information upon which to formulate a basis for an informed response on Carrier's part. Therefore, Carrier again contends that the Claim is procedurally defective.

In addition to arguing that the Claim is procedurally defective, Carrier also argues that the Claim is lacking on its merits. According to Carrier, while operating jurisdictions may have changed, seniority districts remained intact. Furthermore, Carrier denies any violation of Claimant Radio Maintainers' rights since Rule 3 of the applicable Agreement provides, "Radio Maintainers will be required to perform radio work on any portion of the property of (Carrier) and that Radio Maintainers shall be assigned a specific territory which shall generally not exceed the limits of an operating region."

Carrier, in this same vein, also argues that it no longer owns communication equipment in the area; and, more importantly, no communications work has been performed in that particular area since 1977.

As its final significant area of argumentation, Carrier argues that, with the exception of one Claimant, all other Claimants have been fully employed in Carrier's service during the pendency of the instant Claim, and, consequently, did not suffer any economic harm from the Carrier's action herein.

Upon a full and careful consideration of Carrier's procedural objections herein, the Board is persuaded that the instant Claim is both timely filed and containing of sufficient information so as to enable the Board to render a decision upon the merits of the case itself. A review of the Assistant Local Chairman's initial Claim letter of April 30, 1981 (wherein he alleged a violation merely fifteen (15) days prior to his filing date), indicates that said Claim is timely filed being well within the sixty (60) days statute of limitations as specified within Rule 4-P-1(a) of the parties' controlling Agreement. Moreover, while we agree with Carrier that the initial Claim was vague, Carrier essentially waived this argument by agreeing to the Joint Submission. Thus, any vagueness now claimed by Carrier apparently was clarified and thereafter waived by Carrier in said Joint Submission.


Having addressed the procedural issues raised by Carrier in its argumentation our attention next turns to the merits portion of the case itself. In this regard, suffice it to say that the Board has carefully read, studied and considered the complete record concerning this facet of the dispute and finds that the Organization has failed to prove a contract violation in this case. Moreover, the record, albeit most obtuse, fails to establish with any quantum of probative evidence that seniority districts were altered by Carrier's action, or that other of Carrier's employees performed any work which is contractually reserved to Claimants. Further, the Organization has also failed to offer any evidence to substantiate that any economic harm was suffered by the Claimants which is within the remedial power of the Board. For these reasons the instant Claim must be denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.

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