

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier has ignored and violated the provisions and intent of the Clerks' Agreement as hereinafter stipulated when it arbitrarily divided the seniority district of the Auditor of Ticket Accounts, General Office, into two separate seniority districts thereby denying the clerks certain rights they are entitled to under said agreement;

(2) That the Carrier shall now be required to dis-establish the two separate seniority districts and restore the one seniority district as agreed to and as provided for in Rule 5 of our agreement;

(3) That after the one seniority roster has been restored that all new positions or vacancies that have been bulletined since January 1, 1943, under the two separate seniority districts be re-bulletined;

(4) That all employees adversely affected by reason of said violation be reimbursed for wage loss suffered, retroactive to January 1, 1943.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 1, 1943, in accordance with Rule 5, there was one seniority district covering all employees in the office of Auditor of Ticket Accounts (see Exhibit No. 1). On December 1, 1942 (see Exhibit No. 2) the Carrier posted notice that effective January 1, 1943, the Miscellaneous Department would function as a classified department separate and apart from the Auditor of Ticket Accounts. On February 5, 1943, two new rosters were posted covering all employees shown in Exhibit No. 1. Exhibit No. 3 shows the seniority of employees, who were segregated from the original seniority as shown in Exhibit No. 1. Exhibit No. 4 shows names and seniority dates of employees, who remained under the Auditor of Ticket Accounts. New positions and vacancies, for instance, in the new so-called Miscellaneous Department are only bulletined to employees covered by Exhibit No. 3 (see Exhibit No. 5). New positions or vacancies in the Auditor of Ticket Accounts are only bulletined to the employees in that office (see Exhibit No. 6).

POSITION OF EMPLOYEES: There is evidence of an agreement bearing effective date of July 1, 1942, from which the following rules are quoted:

"RULE 1. These rules shall govern the hours of service and working conditions of the following class of employees:

ments is provided for in schedule Rule 24, and that upon refusal of the committee to carry out its obligation under the rule for an equitable assignment of the employees affected, the Management felt compelled to adopt the plan described in the notice of December 1, 1942, Exhibit No. 4-A. This plan accords the employees protection in their assignments and seniority rights to the fullest extent consistent with schedule rules. As stated previously, no claims have in this case been taken up with the local officer in the manner specified in schedule Rule 48 or in any other manner, and in consequence thereof there can be no claims considered for alleged loss of compensation.

SUMMARY

It is the position of the Management that:

(1) Rule 24 gives the carrier the right to divide an office or department into two or more offices or departments;

(2) In event an office or department is divided, Rule 5 necessitates a division of the seniority roster;

(3) The management complied with all schedule requirements when it notified the Committee of the division to be made and endeavored to secure the cooperation of the Committee in respect to placing employees affected thereby;

(4) Refusal of the committee to assume the responsibility devolving upon it under the precise provision of Rule 24 is no justification for an attempt to estop the division of the department in question;

(5) The Board does not possess authority to render an award setting aside a rule which binds the parties to effect disposition by agreement; and

(6) No claims have been submitted in accordance with Rule 48.

An appraisal of the evidence must convince the Board that this case should be remanded to the parties for agreement as provided for in Rule 24.

OPINION OF BOARD: Rule 5 provides: "The following districts are hereby established over which employees covered by seniority roster may exercise their seniority. Seniority districts established shall be continued unless and until changed by mutual agreement between the Management and the General Chairman."

Among the seniority groups thus established by Rule 5 are: "Each classified department of the General Office coming within the scope of this agreement" (with exceptions not material to this claim).

At the time of the adoption of the rules there were four classified departments of the general office, each of which thus constituted a separate seniority district which as above noted Rule 5 provides "shall continue unless and until changed by mutual agreement" and "over which employees covered by seniority roster may exercise their seniority," without any limitation or qualification.

At the time of the Agreement one of those four classified departments, and therefore one of four seniority districts, was the Office of Auditor of Ticket Accounts, including a "Miscellaneous Department" which performed accounting service for the Burlington Transportation Co., the Carrier's bus line operator.

Later, on Oct. 16, 1942, the office of the Executive Vice President notified the General Chairman of the Carrier's intention to divide that Department by separating the bus line accounting work from the railroad ticket accounting work, thus establishing two separate offices or departments. The letter called attention to Rule 24, which provides that in the circumstances to which the rule refers the "employees affected will be assigned to positions in the consolidated or divided offices or departments on an equitable basis as agreed to between the Management and the General Chairman." The letter concluded with a request for a conference for that purpose.

No agreement was reached in the conference, and on Nov. 3, 1942, the Executive Vice President's office wrote another letter to the General Chairman stating:

"In accordance with our discussion in conference, I enclose two copies of a list of the positions, showing their rates, name of incumbent, seniority date, and rank. In addition, I enclose two copies of a proposed memorandum of agreement designed to protect the employees in accordance with the provisions of schedule rule 24."

The list enclosed showed the names of all employees in the Miscellaneous Department, alphabetically arranged. It did not purport to be a separate seniority list, but showed the seniority rank of each employee by number as it appeared on the single seniority roster of the entire department as of Oct. 16, 1942.

The proposed "Memorandum of Agreement" provided that, effective as of Dec. 1, 1942, the Miscellaneous Department should be separated from the Auditor of Ticket Accounts Department. It then said:

"3. Rule 17 provides for maintenance of employees' names on 'home seniority district' and on roster of seniority district to which last transferred.

4. Therefore, pursuant to the foregoing provisions of this Memorandum of Agreement, separate seniority rosters, one for the Auditor of Ticket Accounts Department, and one for the Miscellaneous Department, will be prepared as of Dec. 1, 1942.

- (a) Each such roster will include the names of the employees in both of the two departments referred to herein, with the seniority date and rank appearing on the consolidated seniority roster in existence immediately preceding December 1, 1942, and, in addition, will indicate the 'home seniority district' on the roster of the department in which the employee first performed service.
- (b) New employees entering service on and after December 1, 1942, will establish seniority only in the department in which employed.
- (c) On and after December 1, 1942, the rights of employees in either department to exercise seniority will be limited to the principles expressed in Rule 17 of the schedule agreement; that is, exercise of seniority rights will be limited to the department in which employed on December 1, 1942, except that in case of reduction of force an employee will not be required to exercise seniority in the department in which employed as of December 1, 1942, if such department is other than his home seniority district, on a position which pays a lesser rate than the rate of pay applicable to his former position in his home seniority district. An employee exercising seniority in his home seniority district will forfeit seniority established in district other than home seniority district."

(All underlining supplied.)

In view of the matter quoted, there can be no doubt that the Executive Vice President's office was proposing, not the equitable assignment of the employees affected to positions in the separated departments, as contemplated by Rule 24, but the establishment of separate seniority districts. No other construction is possible in view of the reference to "home seniority districts" and "seniority district to which last transferred," and the proposal to limit seniority rights to the separate seniority lists of the new departments except in certain respects.

This is further shown by the seniority lists in evidence. That of Oct. 16, 1942, which for some reason lists only those employed up to Aug. 1st, 1942, includes all 126 employes of the Auditor of Ticket Accounts Department prior to the division of the Department. On Feb. 5, 1943, the Carrier posted two new seniority rosters made up in accordance with the proposed "Memorandum of Agreement," each assigning new "rank numbers" to the employes listed and proposing to restrict their seniority rights to that particular list except as to certain employes identified by a star which referred to a foot-note mentioning Rule 13 and "seniority in the district from which promoted or transferred," and twenty-five names which were included in both lists.

There can be no question that for operating purposes the Carrier may change these four classified departments, or any others, by consolidation or division as its management may determine, either under its managerial powers and duties or under Rule 24, which does not seek to limit them. On the other hand, there can be no question that in doing so the Carrier cannot unilaterally change the seniority districts "over which" the employes are entitled to exercise their seniority under Rule 5.

In the face of the proposed "Memorandum of Agreement" and of the new seniority lists, it is meaningless to contend that no interference is being made with seniority districts and seniority rights. It is equally meaningless to contend that, because the General Chairman refused to agree to those changes, he was refusing to consider the equitable assignment of employes to actual positions in the divided departments as provided by Rule 24, and that the Organization in consequence has no right to object to the unilateral seniority district changes. The two things are entirely different and the equitable assignment of individual employes to individual positions as may be necessitated by the consolidation or division of offices or departments cannot be construed as identical with the establishment of new seniority districts or rosters. What the Executive Vice President's office suggested in its letter to the General Chairman was not such assignment of employes to positions, but their assignment to new seniority districts and rosters. The record indicates that no such assignment of individual employes to individual positions was necessary. The existing divisions of the office was not changed, but the divisions were merely segregated into two separate offices or departments and each employe apparently continued in the same division as before. This is shown by the two new seniority rosters of Feb. 5, 1943. The separate new bus department roster names 57 employes, the first thirty-nine of whom were in service on or prior to Aug. 1st, 1942, and appear on the single seniority roster of Oct. 16, 1942. The separate new railroad ticket department roster names 114 employes, the first ninety-two of whom were in service on or prior to Aug. 1st, and appear upon the single list of Oct. 16th. Those thirty-nine on the first separate roster and the ninety-two on the second separate roster as of Aug. 1st, 1942, total one hundred thirty-one, which is five more than are shown on the combined roster as of that date; the reconciliation is that twenty-five names are included in both separate rosters and that twenty names in the combined roster are not included in either separate one.

It is obvious that except for the twenty-five employes who were for some reason included in both rosters, the seniority rights of all employes in the original department are seriously affected by their segregation in one of the limited seniority rosters. It is no answer to say that this does not amount to the establishment of new seniority districts. The rules plainly provide that as to those employes there shall be only one seniority list for each seniority district, that the employes covered by the seniority roster may exercise their seniority rights over the entire seniority district and that seniority districts cannot be changed except by mutual agreement. The whole purpose of the seniority rules is to protect the seniority rights of the employes. The unilateral action of the Carrier obviously violated that purpose of the Agreement.

The Carrier objects to the generality of the fourth claim which is "that all employes adversely affected by reason of said violation be reimbursed for wage loss suffered, retroactive to January 1, 1943." The specific ground of

objection is that the individual claims for compensation have not been first taken up with the carrier as provided by Rule 48, nor specifically listed in the claims filed with this Division. Both parties have cited awards sustaining and denying such general claims. Without regard to the applicability of the awards cited, under the rules applicable to those claims, it seems immaterial whether or not the fourth claim is now considered. Its dismissal can have no affect upon the claims of individuals which may be presented and established, and its allowance can amount only to the reassertion of the well-established general principle that losses occasioned by the Carrier's breach of the Agreement shall be compensated for if properly claimed, progressed and proved. Its dismissal will, therefore, be of neither detriment nor benefit to either party.

The fourth claim should, therefore, be dismissed and the first three claims sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been a violation of the Agreement.

AWARD

Claims 1, 2 and 3 sustained; Claim 4 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1944.