# Award No. 5396
# Docket No. CL-5386

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**J. Glenn Donaldson, Referee.**

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## PARTIES TO DISPUTE:

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

## THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

**STATEMENT OF CLAIM:** Claim of System Committee of the Brotherhood on the New York Central Railroad Company, Buffalo and East:

1—That the Carrier violated Rule 18 and the seniority provisions of our Agreement when, effective September 7, 1949, it combined the work of two seniority districts by abolishing at Corning, N. Y., the Motive Power Department positions of Engine Dispatchers used to call engine crews and the Transportation Department positions of Crew Dispatchers used to call train crews, and by substituting Transportation Department positions classified as Engine and Crew Dispatchers, incumbents of which new positions are required to handle the work involved in the calling of both engine and train crews.

2—That the Carrier re-establish the Motive Power Department positions of Engine Dispatchers and the Transportation Department positions of Crew Dispatchers and restore to these positions the work involved in the calling of engine crews and of train crews, respectively.

3—That any and all employes in either of these two seniority districts who sustained wage loss or whose seniority rights were changed as the result of such violations of our Agreement be reimbursed in full and be reinstated on their former seniority rosters with the seniority datings which they held prior to September 7, 1949.

**JOINT STATEMENT OF FACTS:** Prior to September 7, 1949, the calling of train and engine crews at Corning, N. Y. was performed by employes of the Transportation Department and Motive Power Department, respectively, as listed below:

**TRANSPORTATION DEPARTMENT.**

| Name | Dating Seniority | Occupation | Assigned Hours | Rate of Pay (per mo.) |
|---|---|---|---|---|
| A. C. Lee | 2-28-42 | Crew Dispatcher | 7 AM to 3 PM | $266.91 |
| A. S. Damoth | 6-26-42 | " | 3 PM to 11 PM | 266.91 |
| J. F. McGuire | 11-28-42 | " | 11 PM to 7 AM | 266.91 |
| W. H. Johnson | 2-19-43 (Relief) | " | Various | 266.91 |
| R. Darcangelo | 9-26-44 ( " ) | " | 11 PM to 7 AM | 12.61* |
| | | | | *1 day per week |

CONCLUSION.

The Carrier has conclusively shown that the consolidation involved in the instant dispute is no different than similar consolidations effected in previous years which have been recognized by the parties as bona fide consolidations under Rule 18.

The claim should, therefore, be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to September 7, 1949, the calling of train and engine crews at Corning, New York, was performed by employes of the Transportation Department and Motive Power Department, respectively. After notice to the Organization, but without agreement, the Motive Power Department positions were abolished and the work was consolidated in the Transportation Department, which Department was in another seniority district.

Carrier justifies its unilateral action under Rule 18 as interpreted in the light of past practices upon the property. The Organization contends such rule must be read together with the seniority rules and particularly Rule 5, which provides:

> "Rule 5. Seniority Districts. Seniority districts as now established shall be continued unless and until changed by mutual agreement between the management and the accredited representatives of the employes."

Rule 18, entitled "Reorganization", outlines procedurally how seniority is to be handled in event of reorganization or consolidations. There is nothing therein contained which expressly negates other rules in the Agreement, rather it must be read in a manner to presuppose conformance with such rules. See Award 2490. To interpret it otherwise is to nullify Rule 5 by implication which we cannot justify in face of the many past Awards of this Division protecting district seniority. See Awards 3964, 4076, 4653 and 5375, among others.

Failure of the employes to assert their rights under Rule 5 in fact can be explained upon several grounds, not the least in importance being a desire to cooperate. They were free at all times to waive the protection of an unambiguous rule without thereby evidencing an intention to abandon permanently their rights under it. See Award 1395.

We are asked to direct the reestablishment of the positions abolished and restore the work. In recent Award No. 5375 we declined a similar request, believing that under the circumstances there present Carrier had at hand a method of arranging the work so as to avoid violence to the Agreement. There may be no such ready solution in this case. However, the parties are in a better position to determine this fact than is this Division. If further negotiations do not bring accord under Rule 5, before the effective date hereof, the Carrier shall comply with Paragraph 2 of the claim.

The submission exhibits reflect that adequate records are available to make certain the relief to be accorded affected individuals under Paragraph 3 of the claim.

**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 the Agreement between the parties was violated.

AWARD

Claims 1 and 3 sustained; 2, conditionally so.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1951.