Award No. 6003

Docket No. CLX-5707

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949 was violated at Houston, Texas, November 1, 1950, when the work of the Houston, Texas Claim Bureau was arbitrarily transferred to the San Francisco, California Claim Bureau;

(b) The Houston, Texas Claim Bureau, including the seniority roster governing employes covered thereby shall be restored status quo ante;

(c) All employes affected shall be restored to their positions and compensated for salary loss sustained as a result of the arbitrary transfer of work here involved;

(d) Mildred S. Smith shall be permitted to exercise her seniority rights on the position of Assistant Chief Clerk (Classified salary $299.04 basic per month) in the Superintendent's Office where she has a seniority date of April 1, 1920 and that she be paid at the rate of that position in addition to the salary ($269.98 basic per month) of her regular position from which she was removed; and

(e) Management shall be required to make available to employe representatives the payroll records of the Houston, Texas Claim Bureau October 31, 1950 revealing the names of all employes assigned to full opportunity positions, their titles, basic monthly salary of each and furnish such further information as needed for an enlightened judgment of the full proportions of the developments as they affected all employes holding seniority on this Bureau roster.

EMPLOYES' STATEMENT OF FACTS: Prior to November 1, 1950 Railway Express Agency, Incorporated, maintained a Claim Bureau in Houston, Texas with Claim Agent in charge. This Bureau handled claims covering loss and damaged shipments for the Midwest-Texas Department of the carrier. The Houston, Texas Claim Bureau comprised a separate

OPINION OF BOARD: We divide our discussion of the claim here into two parts: (1) paragraphs (a), (b), (c) and (e), which emphasize the general issues for all the involved employes raised by the Carrier's consolidation of its Houston Claim Bureau with its San Francisco Claim Bureau; and (2) paragraph d), which focuses on the particular claim of Mildred S. Smith arising out of the consolidation.

(1) **The general claim:** On November 1, 1950, the Carrier unilaterally consolidated the positions and work of its Houston, Texas Claim Bureau with those of its San Francisco, California Claim Bureau; the positions and work of the former were moved to the San Francisco Bureau. On that date there were five active poitions and employes at the Houston Bureau; ten other positions had been abolished in previous months and the occupants furloughed because of a decline in volume of business. This decline was said to have prompted the above-mentioned consolidation. The Carrier notified the Houston employes, offered to pay various costs of their moving, and consolidated their seniority dates with those of existing San Francisco Bureau employes on the San Francisco roster.

The substance of the Organization's position is that (a) in so doing, the Carrier violated Rules 5 and 22 (quoted above) of the Parties' controlling agreement; (b) Rule 23 (also quoted above) does not provide an exception to Rules 5 and 22 and must be interpreted as confining permissible unilateral consolidations to offices or departments **within** a given seniority district; and (c) no past practice here is controlling, for the great bulk of previous consolidations were effected by the Carrier in respect to situations where the Organization had not been recognized as bargaining agency and therefore could not and would not have raised protest.

The Carrier contends in essence that (a) Rule 22, which requires agreement between Organization and Carrier on transferring positions or work from one seniority district to another, is not applicable to the instant dispute because it contemplates only the transfer of one or a few positions from one still existing agency or office to another existing agency or office; (b) Rule 5 is a general rule requiring agreement between Organization and Carrier on change in seniority districts, but must yield to the specific Rule 23 permitting unilateral consolidation of offices or departments, not at all necessarily part of a single seniority district; and (c) from 1920 to 1950, numerous such consolidations were unilaterally effected by the Carrier without protest from the Organization, thus establishing past practice.

The issues of interpretation and fact before us are clearly posed by the conflicting contentions summarized above. First, we think we must agree with the Carrier that Rule 22 was not designed to cover cases like the one now before us. Several sentences in the first two paragraphs of this Rule mention positions and employes in respect to the seniority district **from** which transferred. That is, the continuing existence of the "from" office and district is definitely implied. This language persuades us that the Rule was not meant to apply to situations in which one district as such is wholly abolished by the merger of the office or bureau comprising the former seniority district with a different office and seniority district in another city. The record establishes that the Houston Claim Bureau comprised a separate seniority district and that it lost its separate identity and existence when merged with the San Francisco Claim Bureau and district.

Second, we are left, then, with the task of interpreting and of reconciling, if possible, Rules 5 and 23. There can be no question about the intent and meaning of Rule 5; The Parties have agreed that (a) the creation of seniority districts of defined limits is to be effected by negotiation and agreement between the parties; and (b) once such districts have been established, they shall not be changed except by mutual agreement. Given the plain meaning of this Rule, we should be compelled to hold for the claimants in this case if it were not for the existence of Rule 23. That is, when the Carrier moved the work of five positions in the Houston Claim Bureau to the San Francisco

Claim Bureau and thereby caused the Houston office to lose its separate identity and existence, it unilaterally altered the limits of the Houston Claim Bureau seniority district; this sort of action is in general not permitted by the language of Rule 5; and we should have to decide that the Carrier violated this Rule.

But Rule 23 was also agreed on by the Parties. And, as already indicated, we must study its language to determine, if possible, whether it modifies the effect of Rule 5 and can be reconciled with that Rule. The Organization has offered one way of harmonizing the two rules; it has said that Rule 23 was meant to cover and permit unilateral consolidation of offices or departments by the Carrier only within the defined limits of an existing seniority district. That is, the Carrier is said to be allowed to make consolidations on its own motion only where two or more offices exist within a given seniority district and where, therefore, the consolidation would not change the agreed on limits of the district.

The Carrier has said that there is no such limitation, expressed or implied in the language of Rule 23, on its right to make unilateral consolidations. The Carrier contends that where the exercise of its unrestricted right to make such consolidations results in changing the agreed-on limits of seniority districts, the Carrier is relieved of the limitations of Rule 5. In contending this the Carrier relies on the rule of contract construction which holds that a rule of general limitation must yield to any other rule containing what amounts to a specific exception to the general rule.

The Organization attempts to refute this point by contending that in the words of Third Division Award No. 2490, a "valuable right (of employes) cannot be abrogated by implication in one section of an agreement when such right was expressly and plainly granted in another section."

As we read the language of Rule 23, we fail to find any suggestion or implication that (a) the Parties meant to prohibit the consolidation of offices or departments between seniority districts and to limit consolidations to those possible within particular districts; or (b) the Parties meant that consolidations of any sort could be effected only by mutual agreement between the Parties. In short, Rule 23 appears to leave intact the Carrier's unilateral right to make consolidations of any sort in respect to offices and departments.

But Rule 23 as such fails to say anything about what is to be done when such consolidations affect the previously agreed-on limits of seniority districts, covered by Rule 5. Is it correct, as the Carrier asserts, that Rule 23 is a specific rule that modifies and limits the application of the more general Rule 5? Or is the reverse correct? Is Rule 5 the specific rule that modifies and limits the general freedom given to the Carrier in Rule 23? If the latter view is correct then the Carrier's freedom to consolidate offices or departments is indeed severely restricted; it is limited to intra-seniority district mergers. If the former view is correct, then the Organization's right to co-determination of seniority districts is certainly not complete.

On these opposing views we think we must rule in favor of the Carrier. We find that Rules 5 and 23 are both contained in Article II on Seniority of the Parties' agreement and that, as usual, most of the rules thereon of general applicability and importance are listed first, leaving to the latter portion of the Article the more specific rules and exceptions. We look on Rule 23 as specifically placing no restrictions on the Carrier's right to consolidate offices or departments. And we do not believe that the preceding and more general Rule 5 can properly be interpreted as containing such restrictions. That is, it does not seem reasonable to conclude that a specific right granted to the Carrier in a later paragraph in Article II is seriously limited by a general right granted to the employes and their Organization in an earlier paragraph. Rather does it appear proper and reasonable to conclude that the earlier, general right of the employes is somewhat circumscribed by right specifically conferred on the Carrier by Rule 23 found in the latter part of Article II.

In respect to the question of the Carrier's past practice on consolidations, we do not think the evidence is conclusive. True, the Carrier placed in the record a list of 45 consolidations among its accounting offices that it had effected from 1920 to 1950, inclusive. But it failed to establish that these consolidations, or most of them, were made without protest by the Organization because the latter assented to the Carrier's interpretation of the agreement.

In the light of our own interpretation we think that Claims (a), (b), (c), and (e) must be denied. It should be clearly understood that this interpretation and ruling is based on and confined to the facts of this particular case and the agreement involved therein.

(2) **The claim involving Mildred S. Smith:** Mrs. Mildred S. Smith, with seniority of April 1, 1920, was a clerk-stenographer in the Houston Claim Bureau seniority district, one of the five employes holding positions in that Bureau when the consolidation was effected. She declined to move to San Francisco and take her place on the consolidated roster there. Instead, she asked to be permitted to displace a junior employe in the Superintendent's office and seniority district at Houston. The Carrier refused such permission, stating that she had, by refusing to move, given up her seniority rights on the consolidated San Francisco roster and that thenceforth she had only the right to bid on bulletined positions in other seniority districts where she also had been holding seniority.

Apparently the claim on Mrs. Smith's behalf is based on the premises that (a) the Carrier violated the agreement in making the consolidation, and (b) Mrs. Smith's position was abolished by virtue of the violative consolidation. We have ruled that the consolidation was not a violation of the Parties' agreement. The record shows, moreover, that Mrs. Smith's position was not abolished but was moved to San Francisco. Since she was not displaced from but instead abandoned her position, the agreement gave her no right to displace a junior employe.

We think her claim must be denied.

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 was not violated by the Carrier.

AWARD

Claim denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1952.