

Award No. 7358
Docket No. CLX-7321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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 Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949 was violated in the Marion, Iowa Seniority District December 11, 1953 when the position of Agent and the work involving the position was arbitrarily transferred to the Cedar Rapids, Iowa Seniority District;

(b) The position of Agent at Marion, Iowa shall now be rebulletined and assigned to employes holding seniority rights in the Marion, Iowa Seniority District; and

(c) J. C. Christensen and other employes adversely affected by Carrier's action shall now be compensated for all salary losses sustained, retroactive to and including December 11, 1953.

EMPLOYEES' STATEMENT OF FACTS: J. C. Christensen with a seniority date of August 1, 1952 was the regular occupant of position titled Agent, Group 1, Position 1, hours of assignment 7:00 A. M. to 11:00 A. M. and 3:00 P. M. to 7:00 P. M. days of rest Saturday and Sunday, salary \$346.95 basic per month, prior to December 11, 1953.

June 30, 1953 Superintendent R. J. Byas wrote General Chairman O. P. Channell that the Carrier was making arrangements to consolidate its operations at Marion, Iowa with its operations at Cedar Rapids, Iowa and requested his views regarding certain angles of the contemplated move. (Exhibit "A") July 21, 1953 the General Chairman replied in part, as follows:

"A transfer such as you propose is clearly one coming within the application of Rule 22 of the Agreement. All duties now performed at Marion, Iowa would continue to be performed at that point, with the possible exception of some supervision and accounting, which I assume would be done at Cedar Rapids.

"The practical effect of such transfer would amount to permitting employes in the Cedar Rapids seniority district to perform work in the Marion, Iowa existing seniority district * * *.

- (1) That the consolidation of the Marion, Iowa office with the Cedar Rapids, Iowa office did not violate the rules of the Agreement.
- (2) That there is ample precedent to support Carrier's action.
- (3) That past practice supports Carrier's action.
- (4) That Rule 22 (Transferring) is not applicable to consolidations.
- (5) That neither J. C. Christensen or any other employe has been adversely affected.

Carrier submits that the Third Division, National Railroad Adjustment Board, should dismiss the instant claim in toto.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The controlling facts in this claim are not in dispute. The controversy arises in applying rules of the Agreement to these facts. In brief, the facts are: Carrier discontinued its Marion, Iowa Agency by reason of decrease in business on authority of the Iowa State Commerce Commission. The remaining business of the Marion Agency was then handled by the Cedar Rapids, Iowa Agency. These two agencies had separate seniority districts and the Marion seniority roster was consolidated with the Cedar Rapids seniority roster. The consolidation of operations at Cedar Rapids, it is contended by Carrier, was in accordance with Rule 23 of the Agreement. On this point and the method of applying the same there is dispute between the parties in that the Petitioner contends the provisions of Rules 5 and 22 were not complied with. Rule 23 reads:

"When, for any reason, two or more offices or departments are consolidated, employes affected shall have prior rights to corresponding positions in the consolidated office or department. After such rights have been exercised, these rules will govern."

Claimant asks that the position of Agent at Marion be rebulletined and assigned to employes holding seniority rights in the Marion Seniority District; that J. C. Christensen and other employes adversely affected shall be compensated for all salary loss sustained, retroactive to and including December 11, 1953. This on the theory that the work at Marion had not disappeared; that this work assigned by bulletin was performed by a new Driver position at Cedar Rapids and this was not possible under the rules as Marion was a separate seniority district. Therefore, it is contended, as work remained to be performed at Marion there was no consolidation contemplated by Rule 23. That consolidation entails what the agreement deals with, this is, positions or work. Cited in support thereof Award 5884 on the theory that employes did have rights which they could assert under the provisions of Rule 5 of the Agreement. Rule 5 reads:

"Seniority districts of defined limits shall be established by mutual agreement between the management and duly accredited representative of the employes, and, pending the establishment of such districts, the districts as now established by Supplement Nineteen (19) to General Order Twenty-Seven (27), shall remain in effect."

Also that Carrier made no attempt to comply with Rule 22, citing Award 6309.

Carrier relies on the provisions of Rule 23 contending that it covers the situation presented here and is not a transfer of positions or work

involving a position under Rule 22, and that the provisions of Rule 5 are not a condition precedent, conference and agreement, to Carrier's right to consolidate offices or department under Rule 23. Cited in support of this position are Awards 5803, 6945, 6655, and 6044 with others.

It would seem that Carrier has shown sufficient justification for the discontinuance of its Marion office and under previous awards of the Division, notably Awards 5884 and 6003, we have, in considering a similar fact situation as applied to the rules, held that Rule 23 is applicable as here used by Carrier. We are of the opinion that these claims should be denied.

We view the provisions of Rule 23 to give to Carrier the right to consolidate without restriction, unless such consolidation action is done in an unreasonable, arbitrary and capricious manner. Such factors are not present in this consolidation. And that Rule 5 does not present a restriction on this right if it is properly done, and we consider that facts of record show Carrier's good faith in the action taken. And we construe these cited rules to contemplate such consolidations as this one was accomplished.

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

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

That the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.