Award No. 8230
Docket No. CL-7527

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) Carrier violated the controlling Agreement between the parties when on June 1, 1954, and subsequent dates, it unilaterally removed car distributor's work from the car distributor at Liberal, Kansas, which was performed by him for the immediate vicinity of Amarillo, Texas, work that had been assigned in Seniority District No. 14 for approximately 33 years, and reassigned such work to another car distributor at El Reno, Oklahoma, in Seniority District No. 16, and

(b) That Car Distributor J. H. Farris and/or his successor or successors in Seniority District No. 14 shall be paid a minimum call for June 1, 1954, and for each subsequent date thereafter at the rate of $356.70 per month, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Amarillo, Texas Station is included in and is a part of Seniority District No. 14. Mr. J. H. Farris is assigned as Car Distributor on Seniority District No. 14 and prior to June 1, 1954, Mr. J. H. Farris distributed the cars for Amarillo Station proper and had so distributed them for many years. The Car Distributor at El Reno, Oklahoma, located on the Southern District holds seniority rights on District No. 16 and has no seniority rights on District No. 14.

Seniority District No. 14 is shown on page No. 30 of the Clerks' Agreement dated August 2, 1945, reading as follows:

"El Paso—Amarillo District, from but not including Herington, Kansas to Tucumcari, New Mexico including Dodge City Line—to but not including Sayre, Oklahoma, including Dalhart to Morse and Amarillo Line to Liberal."

Seniority District No. 16 is shown on page No. 31 of the Clerks Agreement, dated August 2, 1945, reading as follows:

"Panhandle-Indian Territory District, Sayre, Oklahoma, to but not including Booneville, Arkansas, including Pittsburg and Alva Lines and Okeene to but not including Enid, not including El Reno

Petersen took the position that conference was not necessary. Logic teaches us that bilateral agreement is not possible if one of the parties, in this case the complainant, refuses to participate in a suggested conference.

Although the agreement requires no conference unless seniority districts or parts thereof are consolidated and job rights affected and even though conference might be held as a matter of courtesy and interest to the organization, nothing in the agreement prescribes whether that conference will be held prior to or subsequent to any rearrangement of work, which does not affect the positions of any of the employes. When General Chairman Petersen refused to confer with respect to matters arising out of this rearrangement of work, it would appear that he effectively closed the door on any claims founded on a charge that such action was a violation of the agreement because of its unilateral nature.

The situation giving rise to the instant claim is simple. Amarillo, Texas is a highly competitive traffic point. Its war time and post war industrial growth has been phenomenal and the change made in this instance was made in order that shippers might receive service to which they are rightfully entitled. The Carrier's officers in this instance, after conferring with several Amarillo shippers, wanted to correct a poor operating condition which had materially affected the amount of business we were getting at Amarillo.

The decision of our officers to make this change was on the basis of shipper complaints with reference to our car service. In the past, as well as now, some empty equipment for Amarillo has been provided by the Southern Division, as that is a principal source of our car supply. Prior to June 1, 1954, it was necessary for our forces at Amarillo to contact the Car Distributor at Liberal who, in turn, would in many instances relay the message to El Reno, asking that the Southern Division furnish cars that were needed at Amarillo. By transferring the Amarillo work from Liberal, the work of the car distributor at El Reno was not materially increased as he was, in fact, handling the distribution of some cars for Amarillo long before the change was made. The Car Distributor at Liberal often acted only in an intermediate capacity by forwarding Amarillo car orders to the Car Distributor at El Reno.

Since there was no consolidation as prescribed by Rule 33, since no car distributor position was abolished, since no new duties were assigned to the car distributor at El Reno, since car distribution work does not follow strict seniority district lines, and since similar changes in car distributor's territory have been made in the past without a conference or protest, the Carrier has found no rule violation and has declined this claim.

It is further the position of the Carrier that this Board cannot properly issue a sustaining Award, for to do so would be to compensate the employe for service not rendered and there is no provision in the current agreement between the Carrier and the organization for such compensation.

It is the contention of the Carrier that the Car Distributor's work formerly performed at Liberal is now being performed by an employe coming within the scope of the agreement between the Carrier and the organization and that the agreement is not being violated and your Honorable Board is respectfully petitioned to so hold.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Argument offered on behalf of Organization here charges Carrier with violating Rules 5, 31 and 88 of the applicable Agreement.

However, it must be noted from the record that Organization's ex parte submission concedes "Carrier did not transfer the territory including the city

of Amarillo to the Superintendent in El Reno, Oklahoma, but they required the Car Distributor at El Reno, Oklahoma to cross seniority lines and distribute cars for Amarillo, Texas proper. * * * So it becomes very clear it was merely a violation of the Clerks' Agreement in assigning work from one seniority district to another."

This brings us to Rule 31 of the applicable Agreement, reading:

> "Positions shall not be transferred from one seniority district or roster to another without advance notice to employes affected and his representative, and opportunity afforded for conference.
>
> "Employes permanently transferred with their positions from one seniority roster or district to another will retain their positions and their original seniority. Employes not desiring to transfer with their positions shall be governed by Rule 25."

What has happened here is that Carrier transferred the distribution of cars for Amarillo, Texas from the car distributor located at Liberal, Kansas (seniority district 14) to the car distributor located at El Reno, Oklahoma (seniority district 16).

Citation of this portion of Award 5091 (Coffey) is made on behalf of Organization:

> "'Rule 4(a) provides that seniority rights of employes will be confined to their respective seniority rosters. This Board has repeatedly held that positions or work may not arbitrarily be removed from the confines of one seniority district and placed in another, as was done here.' See Awards 99, 198, 199, 610, 612, 752, 753, 973, 1403, 1440, 1611, 1612, 1685, 1711, 1808 and 1892."

However, Referee Coffey had pointed out in the paragraph preceding the one quoted above, that the "* * * result of the Carrier's action was to suspend Roster 1-B employes from their own work 'during regular hours to absorb overtime' regularly worked at payroll closing periods, twice monthly, by claimants who are Roster 1-A employes. * * *"

Award 5091 turned on the fact that:

> "For sixteen years employes holding seniority rights on Roster 1-B * * * were not permitted to perform the work of Roster 1-A employes to prevent the latter from making overtime. The departure therefrom first came about in connection with the second payroll period in June, 1946, thereby provoking this controversy.
>
> "That such departure was in violation of the Agreement, Board precedent and contrary to basic principles governing seniority rights and application of seniority rules is so pronounced as to hardly call for citation of authority."

The same overtime principle is involved in Award 4534 (Carter). There is no charge or proof in the docket before us that the Absorbing Overtime Rule is involved here.

Many other Awards are cited by or in behalf of Organization, most of which contain circumstances not here present. For example Awards 1314, 1808, 5397, 5560, 5785, 5773 and 5790 involved abolition of a position under the Clerks' Agreement and assignment of the remaining duties to one not covered by the Clerks' Agreement.

There is, however, Award 6309 (Wenke) which is cited in Organization's behalf. In it Referee Wenke noted:

> "We have often said that positions or work may not unilaterally be removed from the confines of one seniority district and placed in another. * * *"

However, in Award 6309 Carrier transferred not only positions, but the occupants thereof.

In addition, Award 6309 was concerned with an admitted change in seniority districts without mutual agreement, as required; while in the instant case, as we have noted, the Organization concedes "it was merely * * * a violation * * * in assigning work from one seniority district to another * * *" (Rule 31).

We are not unmindful of the positions of Organizations generally that "work is the essence of a position; that the two are inseparable; that a Carrier may not do piecemeal what is prohibited from doing as a whole."

But we are still confronted with these undisputed facts:

1. Rule 31 of the instant agreement says clearly that "positions" shall not be transferred from one seniority district to another without advance notice to employes affected and his representative, and opportunity afforded for conference.

2. So far as a common definition of the word is concerned, no "position" was transferred. The car distributor position which existed in Seniority District 14 remained after Carrier's action and continued to be occupied by Claimant Farris; the car distributor position in Seniority District 16 continued in existence.

3. The only item transferred was the work of distributing cars at Amarillo, Texas. Carrier's reasons for the change may be summarized as follows:

> "We do not have direct telephone communication between the Chief Dispatcher's office at Liberal and our offices at Amarillo. All Rock Island business between those two points is handled by telegrams and because of the roundabout circuits necessary to be used, the sending of a message is not too speedy. * * * We have direct telephone service between El Reno and Amarillo."

We have also before us Carrier's position that its management rights are restricted only to the extent Carrier has restricted itself by Agreement vs. Organization's position that Management has restricted itself to the extent of the Agreement provisions it here contends Carrier has violated.

Organization also cites letter dated June 24, 1954 from Carrier's Manager of Personnel to Organization's general chairman in which the former states:

> "* * * If you mean the Carrier officers should have discussed the matter with you before actually making the change in the handling of our car distribution work at Amarillo, then I can say to you that that should have been done." * * *

Be that as it may, Carrier's Manager of Personnel has no right to change, by letter or otherwise, the Agreement.

Actually, Rule 31 must be considered as a whole. If, for example, Carrier could not transfer a position from one seniority district to another without agreement on the part of the Organization involved, the contracting parties should have so stated.

The first part of that Rule says that "positions shall not be transferred from one seniority district to another without advance notice * * * and opportunity afforded for conference."

To what purpose? To have Organization agree that Carrier had right to transfer such positions? We think not. Carrier has that right, but in the

exercise of that right, Carrier is cautioned to see to the protection of the seniority rights of "employes affected."

The first paragraph of the Rule cannot be considered without the second paragraph—

"employes transferred with their positions" and

"employes not desiring to transfer."

Who were "affected" by the change here complained of? The record is devoid of any evidence by the Organization that anyone, including Claimant Farris, was adversely affected.

Carrier put this change into effect on June 1, 1954, and by letter the same date, so notified the Organization, stating therein:

> "* * * Handling of the work by the Car Distributor at El Reno will not, in my opinion, involve sufficient work to cause any transfer of employes under Rule 33 of the Clerks' schedule. If you feel, however, it is necessary to make any transfer of employes on account of this change, I will be glad to confer with you in line with Rule 33."

There followed an exchange of correspondence between the respective parties which lasted until August 2, 1954 when General Chairman Petersen stated he could "not agree with you (Carrier) that there was any consolidation under Rule 33. * * * You unilaterally assigned distribution of cars at Amarillo, Texas, to Car Distributor on another seniority district. * * *"

Carrier clearly had the right to do what it did here, and the Organization clearly has the right to challenge Carrier's action and support its charge that such action was violative of the Agreement.

We hold, however, that Organization has failed to prove Carrier violated the Agreement. A denial Award is in order.

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 has not been violated.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1958.