# Award No. 13853
# Docket No. CL-14432

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Daniel House, Referee**

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## PARTIES TO DISPUTE:

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

## ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5410) that:

(1) Carrier violated the Clerks' Agreement at New Orleans, Louisiana, when on October 10, 1962, it arbitrarily and unilaterally subdivided the Louisiana Division, Local Freight Office, New Orleans, Louisiana Seniority District Roster by transferring three clerical positions and seniority of the employes assigned thereto, i.e., F. T. O'Hara, E. F. Shopfer and A. A. Wagner to the Louisiana Division, New Orleans Seniority District Roster, New Orleans, Louisiana. By virtue of such violation, the Carrier will now:

(2) Restore the work and seniority of Employes O'Hara, Shopfer and Wagner to the Louisiana Division, Local Freight Office — New Orleans Agency Seniority District Roster, and

(3) F. T. O'Hara, E. F. Shopfer and A. A. Wagner, and/or their successors in interest on the Louisiana Division Local Freight Office — New Orleans Agency Seniority District Roster, if any, be compensated for an additional day's pay, at the rate of the positions to which assigned, for October 10, 1962, and each subsequent day until such time as the violation has been corrected by the return of the work, positions and seniority of Claimants to the seniority district roster from which removed.

EMPLOYES' STATEMENT OF FACTS: There is employed at New Orleans, Louisiana, a force of employes who perform the station and yard clerical work subject to the provisions of the Clerks' Agreement with the Carrier effective June 23, 1922, as revised.

Subsequent to July 1, 1942, the date Mays Yard, New Orleans, Louisiana, was placed in operation, Carrier maintained at least three clerical positions in the yard office at that location to perform work for and under jurisdiction of

violation. It is a well settled rule of statutory construction that a penalty is not to be readily implied, and that a person or corporation is not to be subjected to a penalty unless the words of a statute plainly impose it. Tiffany v. National Bank of Missouri, 85 U. S. 409; Keppel v. Tiffin Savings Bank, 197 U. S. 356. The rule is equally applicable to the construction of contract; for the parties can readily agree upon penalty provisions if they so intend, and the absence of such provisions negatives that intent. The Supreme Court of the United States said in L. P. Steuart & Bro. v. Bowles, 322 U. S. 398, that to construe a statute as imposing a penalty where none is expressed would be to amend the Act and create a penalty by judicial action; that it would further necessitate judicial legislation to prescribe the nature and size of the penalty to be imposed. Similarly, for this Board to construe an agreement as imposing a penalty where none is expressed, would be to amend the contract, first, by authorizing a penalty, and second, by deciding how severe it shall be. Not only are the parties in better position than the Board to decide those matters; they are the only ones entitled to decide them. Consequently there have been many awards refusing to impose penalties not provided in the agreements. Among them are: Awards 1638, 2722 and 3672 of this Division; Awards 6758, 8251 and 15865 of the First Division; and 7212 and 8527 of the Third Division."

If the union can prove a violation in this case, it cannot meet its burden of proving double monetary damages, because the claimants suffered no loss of pay in case of violation of the contract. Therefore, this Board in making an award as requested in the claim would be imposing a penalty on the company and giving the claimants a bonus not provided for or contemplated by the provisions of the contract. To make such an award would be beyond the jurisdiction of this Board.

## IV. CONCLUSION

The issues are (1) whether under Rule 19 the company may, without agreement with the union, transfer three employes with their seniority and positions from the agency seniority district and roster to the yard seniority district and roster, and, (2) if not, are the three claimants entitled to an additional day's pay beginning October 10, 1962, or to wage losses, if any.

The company has conclusively shown (1) that Rule 19, rather than Rule 4(c), is the applicable and governing rule and was complied with, (2) that the company's actions are backed up by the Board's previous interpretations of Rule 19, and (3) that had the company erred, claimants would be entitled only to wage losses, if any, rather than to the bonus claimed.

The claim should therefore be denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On October 10, 1962, O'Hara, Shopfer and Wagner, occupying Position Numbers 239, 256 and 245, respectively, were, by unilateral decision of Carrier, transferred with their positions from the New Orleans Freight Agency Clerical Roster to the New Orleans Yard Roster. No physical move was involved and they continued to work at the same desks in the same location. Employes contend that the transfer was a change in the seniority districts and rosters by subdivision and consolidation such as required

prior agreement by the Employes under Rule 4. Employes to support their contention cite numerous awards including Award 198 and Award 21 of Special Board of Adjustment No. 170, both between the same parties.

Carrier, citing among others, Awards 7420 and 11040, between the same parties, argues: Rule 4 prohibits only unilateral subdivision or consolidation of districts and rosters; the transfer of one or more positions from one district to another is not a subdivision or a consolidation; and Rule 19, as found in Award 7420, "represents an agreement between the parties that Carrier may effect transfers of positions from one seniority district to another. . . ."

We have repeatedly held (until Award 7420) that positions may not be unilaterally transferred from one seniority district to another; in Award 2050, between the same parties as here, we said:

> "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 here done. See Awards 99, 198, 199, 610, 612, 752, 753, 973, 1403, 1440, 1611, 1612, 1685, 1711, 1808 and 1892."

Applicable portions of Rule 4 read as follows:

SENIORITY RIGHTS

"(a) Seniority rights of employes will be confined to the following seniority districts:

* * * * *

Each Superintendent's Division will constitute a seniority district for Transportation and Maintenance of Way employes, except the freight stations enumerated below, each of which will constitute a separate seniority district:

Chicago
Markham
Memphis
New Orleans

* * * * *

(c) The seniority districts and rosters enumerated in Rule 4 may be subdivided or consolidated by mutual agreement between the Manager of Personnel and the General Chairman, in which event records of employes affected will be transferred without change."

Rule 19 is as follows:

"TRANSFERRING

Employes transferred with their positions from one seniority district or roster to another shall retain their positions and continuous seniority. Employes transferring from one seniority district or roster to another shall rank from date of transfer on seniority district or roster to which transferred."

Being faced here with opposing sets of interpretations of these rules, we must attempt to choose the construction based on the soundest reasoning.

In Award 11040 we find the following reasoning:

> ". . . it is contended that the transfer of Clerk Reid with his position to Memphis was a change in the seniority districts and because there was no agreement the collective bargaining agreement was violated.
>
> All provisions of the Agreement must be read together and each given proper effect relative to every other provision. To adopt the construction urged by the Organization would have either of two effects. Either we must read into Rule 19 a provision requiring prior agreement between the parties or read out of the agreement Rule 19 altogether." . . .

There is an additional alternative. It is possible to adopt Employes' construction of Rule 4, without either reading into Rule 19 a "prior agreement" provision or reading Rule 19 out of the agreement altogether: this can be done by simply refraining from reading any particular determiner of the transfer into Rule 19; it would then depend on the requirements of other rules whether or not an agreement is required prior to any particular transfer, and Rule 19 would be left to be construed in its most literal meaning to mean that, however the transfer was determined, the involved employes "shall retain their positions and continuous seniority."

Award 11040 reasons further:

> "It is argued that past practice and prior awards support the contention that an agreement is required in situations confronting the Division in this case. **But the examples shown appear to relate to consolidation or subdivision of rosters** or the establishment of new rosters, or the change of rates of pay or duties and properly were controlled by Rule 4(c). Likewise **the prior awards cited related to** the transfer of work and not the employe, or removal of work to be performed by employes in the district to which removed, or **subdividing rosters.** In the case before the Division the record shows that the employe and his position were transferred, and the employe, when transferred, performed substantially the same duties at Memphis as he had at Jackson." (Emphasis ours.)

But this begs the question: it was precisely the Employes' contention that the transferring of a position with the employe is covered by the language in Rule 4(c) permitting seniority districts and rosters to be "subdivided or consolidated" by agreement. Thus the prior awards and practices cited by Employes in 11040 and rejected by the Referee because they involved subdivision, were in point and were supportive of Employes' position in that case. To distinguish the case in 11040 from the cases cited by Employes, Award 11040 implies that in the cases cited by Employes the employe and his position were not transferred together or that the employe after being transferred did not perform the same duties; but at least in the last prior case decided between the parties on the subject, Special Board of Adjustment No. 170, Award 21, the cases of some of the employes unilaterally transferred by Carrier cannot thus be distinguished. It is to be noted that the Carrier member of Special Board of Adjustment No. 170 apparently concurred in the decision by signing it without noting any dissent.

The Opinion in Award 11040 concludes its justification for the denial of the claim with the assertion:

> "The transfer of a single employe with his position from one district to another may be a change in the respective rosters but it is not a subdivision or consolidation as contemplated by Rule 4(c)."

This assertion is not the necessary logical conclusion of the reasoning which preceded it; its justification may be in the reasoning in Award 7420 which had been cited to the Referee by the Carrier. The key reasoning in Award 7420 is stated in the Opinion:

> ". . . The question is not whether the transfers of positions amounted to a 'change' in seniority districts; it is whether the transfers amounted to a 'subdivision' or 'consolidation.' Rule 19 deals with transfers of positions from one seniority district to another and spells out the rights of employes whose positions are transferred. Rule 4 (d) is concerned with subdivision and consolidation of seniority districts and makes no attempt to spell out rights but leaves it to a mutual agreement to be arrived at in each case. **The difference between 'transfers of positions' and 'subdivision and consolidation of seniority districts' is clear and unambiguous,** and the parties' limitation of Rule 4 (c) to subdivisions and consolidations, and use of a separate rule to deal with transfers is significant. We think that Rule 19 represents an agreement between the parties that Carrier may effect transfers of positions from one seniority district to another and an agreement in advance as to the rights of employes whose positions are transferred; and that such transfers are not subject to the mutual agreement required in the case of subdivisions and consolidations." (Emphasis ours.)

But is evident from the interpretation of Rules 4 and 19 in the Opinions in Awards 198 and 2050, that at least a majority of the Board in those cases did not find it clear and unambiguous that the parties herein intended to differentiate, as does the Opinion in Award 7420, transferring positions from subdividing and consolidating seniority districts or rosters. It is true that the lack of clarity and the ambiguity thereby established do not necessarily lead to the conclusion that there is no difference between the concepts of transfer and of subdivision and consolidation (the Employes argue, in effect, that the transfer of positions can be one result of subdivision and consolidation); but neither does the fact that there may be a difference lead to the conclusion arrived at in Award 7420 that Rule 19 represents an agreement between the parties that Carrier may unilaterally effect transfers of positions from one seniority district to another.

Unless there is evidence of tradition, practice or custom, proving other intent of the parties, a contract construction based on the dictionary meanings of the language is sounder than that construction which, in order to avoid finding the rules in conflict with each other, finds it necessary to read into a rule an inferred and added thought.

In Webster's New International Dictionary, "subdivide" is defined: to divide the parts into more parts; to divide again, as what has already been divided. And "divide" is defined, in the meanings most appropriate to the understanding of Rule 4, as: to separate into two or more parts or pieces; to sunder; to separate into parts; to cause to be separate; to cut off; and to

separate into classes or parts. "Consolidate" is there defined, in the meaning most appropriate for Rule 4, as: to combine.

There is no conflict between Rule 4 and Rule 19 if we construe each in terms of the dictionary definitions of the words without adding the inference to Rule 19 that the transfer could be determined unilaterally by Carrier: the words "employes transferred" only mean employes who have or who have been transferred; the identity of the determiner of the transfer is not found in the usual meanings of the words of Rule 19. There is no persuasive evidence that the parties intended any additional meaning to be inferred and added to the words in Rule 19. And there has not been presented a valid reason for us to impose a meaning on Rule 19 which would cause us to find it in conflict with a construction of Rule 4 based on the dictionary meanings of the language in that Rule. We therefore, see no reason to change the position we took with regard to Rules 4 and 19 in Award 198 where we said:

> "When the carrier moves an identical position from one seniority district to another, the employe, under Rule 19, is entitled to follow the position with unimpaired seniority rights. Indeed, the position so moved continues in the first seniority district until the parties, under Rule 4, make some agreement as to the district in which the position will be carried permanently."

Carrier's letter of October 2, 1962, announced the action which is the source of complaint here:

"ILLINOIS CENTRAL RAILROAD

October 2, 1962

Mr. R. F. Connell, District Chairman
Brotherhood of Railway Clerks
7509 Patricia Street
Arabi, Louisiana

Dear Sir:

The clerical force in Mays Yard Office under the supervision of Transportation Inspector Toups, at New Orleans, La., is at present comprised of employes from two separate seniority districts and rosters, the New Orleans Terminal Yard Clerical and New Orleans Freight Agency Clerical Rosters as indicated below:

"NEW ORLEANS TERMINAL YARD CLERICAL ROSTER

**(Mays Yard Office)**

| Position Number | Name | | Present Roster | Roster Number | Seniority Date |
|---|---|---|---|---|---|
| 135 | F. J. Toca | (M) | Terminal | 37 | 11/11/41 |
| 136 | G. B. Gaudet | (M) | Terminal | 38 | 1/13/42 |
| 137 | A. T. Huxen | (M) | Terminal | 20 | 7/ 5/20 |
| 139 | W. J. Meyer | (M) | Terminal | 23 | 9/12/20 |
| 341 | H. J. Sanders | (M) | Terminal | 22 | 8/18/20 |

| Position Number | Name | | Present Roster | Roster Number | Seniority Date |
|---|---|---|---|---|---|
| 438 | E. W. Condon | (M) | Terminal | 34 | 6/23/41 |
| 580 | C. M. Roser | (M) | Terminal | 42 | 5/ 8/42 |
| 338 | A. R. Gilmore | (M) | Terminal | 39 | 3/ 9/42 |
| 145 | M. C. Whitman | (M) | Terminal | 43 | 5/14/42 |
| 161 | T. J. Lee | (M) | Terminal | 31 | 5/28/37 |
| 144 | J. P. Gunckel | (M) | Terminal | 44 | 6/18/42 |
| 439 | A. V. Fanguy | (M) | Terminal | 21 | 8/10/20 |
| 149 | R. L. Sauerbrei | (M) | Terminal | 66 | 11/13/51 |
| 155 | J. L. Kirschenheuter | (M) | Terminal | 56 | 1/ 5/44 |
| 152 | J. P. Lamia | (M) | Terminal | 65 | 11/18/50 |
| 151 | R. F. Loving, Jr. | (M) | Terminal | 75 | 7/22/61 |
| 440 | R. J. Rohbock | (M) | Terminal | 19 | 6/ 3/20 |

**NEW ORLEANS FREIGHT AGENCY CLERICAL ROSTER**

**(Mays Yard Office)**

| | | | | | |
|---|---|---|---|---|---|
| 239 | F. T. O'Hara | (M) | Frt. Agency | 38 | 9/ 8/24 |
| 256 | E. F. Schopfer | (M) | Frt. Agency | 46 | 4/15/41 |
| 245 | A. A. Wagner | (M) | Frt. Agency | 81 | 7 /1/42 |

The transportation Inspector has jurisdiction over the seventeen positions located at Mays Yard on the New Orleans Terminal Yard Clerical Roster whereas the three positions located at Mays Yard on the New Orleans Freight Agency Clerical Roster are under the jurisdiction of the Freight Agent. It is impossible for the Freight Agent to properly supervise the performance of duties on positions located at Mays Yard under his jurisdiction. These positions should be supervised by the same authority as other positions in the same location. Therefore, as provided in Rule 19 of the Rules Agreement, the following employes with their positions are being transferred from the New Orleans Freight Agency Clerical Roster to the New Orleans Terminal Yard Clerical Roster, effective October 10, 1962.

| Roster No. | Name | Seniority Date | Position No. | Position Title |
|---|---|---|---|---|
| 38 | F. T. O'Hara (M) | 9/ 8/24 | 239 | Waybill/Record Clerk Mays Yd. |
| 46 | E. F. Schopfer (M) | 4/15/41 | 256 | Record Clerk Mays Yard |
| 81 | A. A. Wagner (M) | 7 /1/42 | 245 | Waybill/Record Clerk Mays Yd. |

The employes transferred shall retain their present positions and Clerical Seniority dates and will be dove-tailed in their proper place on the New Orleans Terminal Yard Clerical Roster to which transferred and in concert therewith their names will be removed from the New Orleans Freight Agency Clerical Roster.

Please acknowledge receipt.

Yours very truly,

/s/ J. A. Flechas
Agent."

As can be readily seen, the letter in its first paragraph cuts off and causes the positions and names of the Claimants to be a separate part of the Agency Roster, as the class "Mays Yard Office." In the last paragraph of the letter Carrier consolidates that cut-off "Mays Yard Office" part with the Yard Roster. The result was the transfer of the three employes with their positions to the Yard Seniority District. Carrier's decision without agreement of the Employes so to transfer Claimants violated Rule 4 as we construe it; that Carrier then carried out the requirements of Rule 19 that employes transferred with their positions retain their positions and continuous seniority does not negate the violation.

Rule 4(a) confers a protection as well as a limitation in restricting seniority rights to specified seniority districts. Many other rules, as well, deal with definitions and applications of seniority. It is an important part of an employe's rights to know his seniority status; the definitions in the agreement assure him of this knowledge and inform him of the circumstances under which his seniority status may be changed. If Carrier had the right, unilaterally, to transfer one or more positions from one seniority district or roster to another, the seniority rights and status granted the employes in the rules might well become ephemeral.

On the basis of the foregoing we will sustain Claims numbered (1) and (2); we will deny Claim numbered (3) because there has been no showing that Claimants or their "successors in interest" have suffered any monetary loss as a result of the violations and there is no applicable penalty provision in the agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim Nos. (1) and (2) sustained; Claim No. (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13853
DOCKET CL-14432 (Referee Daniel House)

The errors committed by the Referee are many, and his refusal to follow sound precedent involving disputes between the parties directly at point serves to frustrate the purposes of this Board and to unsettle that which was settled.

seniority district was divided or separated into two or more parts and no parts were again divided into more parts. In plain common sense, if two or more seniority districts are consolidated, but one exists after the consolidation. In the same vain, if a seniority district is divided or subdivided, the resulting parts or more parts would exist independent of one another. Since neither was done in the instant case, Rule 4(c) was clearly not involved or applicable and no amount of verbal gymnastics can change that fact. In the instant case there were two seniority districts prior to the transfer and the same two existed after the transfer.

Since seniority districts were neither subdivided nor consolidated within the plain language of Rule 4(c), what then of the lack of determiner in Rule 19? No rule can be found in the Agreement which requires that transfers covered by Rule 19 can be made only by mutual agreement and certainly neither the organization nor the individual employe is the determiner. Carrier alone is the determiner because Rule 19 represents an agreement in advance, permitting carrier to take such action. In this respect Awards 7420 and 11040 which involved the present parties are in accord with Awards 6655 and 11919. Further, that Rule 19 does not state that the carrier is the determiner is of no special significance. There are many rules in the agreement which do not specify the determiner of various actions, nevertheless the carrier, without question, is the sole determiner. It is obvious, therefore, that the Referee's reasoning is neither sound nor based on the plain language of the agreement.

The absurdity of Award 13853 is apparent on its face and in the end does no harm to well-reasoned Awards 7420 and 11040.

For these and other reasons, we dissent.

**R. A. DeRossett**
**W. F. Euker**
**C. H. Manoogian**
**G. L. Naylor**
**W. M. Roberts**

## LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 13853 DOCKET CL-14432

The only thing frustrated by Award 13853 is the Dissenters' obvious assumption that Carrier's "Divine Right to Manage" or "Laissez Faire" philosophy should prevail over the provisions of the collective bargaining Agreement. Such an attitude actually tends to deny that Agreements even exist. But they do exist and the instant one, as most of them do, dealt specifically with questions that were involved in this case, i.e., the establishment and retention of seniority; the limits of seniority districts; how changes therein are to be by mutual Agreement, etc.

The Dissenters' assert that in the instant case there were two seniority districts prior to the transfer and the same two existed after the transfer. But that is not factual within the context in which this case arose as the facts are that both districts were changed in the manner and to the extent as charged by the Employes. Of even more importance is the fact that nothing

The Referee first views the instant case as involving a contest between opposed sets of interpretations so that he could place himself in the position of having to choose "the construction based on the soundest reasoning." If any contest existed, it was one between awards interpreting the agreement in cases factually analogous to the instant one and awards involving factually dissimilar cases.

Neither Award 198 nor Award 2050 involved the transfer of employes with their positions and continuous seniority from one seniority district to another. Rather, the facts before the Division in those cases plainly showed that work only was transferred; hence, these awards were not at point with the instant case and it is obvious that the conclusion from Award 198, which the Referee adopts, is and was nothing more than obiter dictum. As for Award No. 21 of Special Board of Adjustment No. 170, it only condemned the unilateral consolidation of seniority districts, something not involved in the instant case.

On the other hand, two awards, Awards 7420 and 11040, both by Referees having years of experience in the railway labor field, were directly at point and clearly sustained the carrier's position. These awards were not based on obiter dictum. Further, if lack of dissent be any criterion, it is significant that there was no Labor Member dissent or special concurrence to Award 7420 or 11040. If anything, the lack of dissent to these awards (the most recent expression for the parties by this Division on cases directly at point until the instant award) indicates that the prior awards were not so palpably wrong as to warrant being overruled in a subsequent similar dispute involving the same parties.

The Referee's search for "the construction based on the soundest reasoning" as between opposing sets of interpretations is curious. The Referee sets forth the reasoning in Awards 7420 and 11040 and proceeds to criticize same, but does not see fit to set forth the reasoning of Award 198 and Award No. 21 of Special Board of Adjustment No. 170. This is understandable because neither Award 198 nor Award No. 21 of the Special Board contained any reasoning, sound or otherwise, for the conclusions reached. This being so, we are at a loss to understand how the present Referee could be in a position to "attempt to choose the construction based on the soundest reasoning" as between the opposing sets of interpretations when one set contained no reasoning whatever. Certainly, the present Referee was in no position to divine the reasoning process, if any, the authors of Award 198 and Award No. 21 of the Special Board went through. What is clear is that the present Referee adopted a conclusion from Award 198, dictum and all, and attempted to supply what was deficient in Award 198.

The substance of the Referee's reasoning is thus: Rule 19 does not contain a "determiner," i.e., it does not state who shall determine whether a transfer will be made and in the absence of a determiner resort must be had to other rules. The Referee then lands on Rule 4(c), thereby holding the determiner to be the signatory parties — by mutual agreement. But to find Rule 4(c) applicable it would first be necessary to find that seniority districts had been subdivided or consolidated. This the Referee does by resort to dictionary definitions.

It is a basic rule of contract construction that words are to be understood in their ordinary and popular sense. Even so, the dictionary definitions lend no assistance to the Referee. No seniority districts were consolidated. No

in the Agreement gave the Carrier the right to arbitrarily cut the Claimants names off the Agency roster, where they had gained their rights, and place them on another roster where they had held no rights.

Claimants were, insofar as the record showed, quite content with the positions they held by virtue of the seniority they had earned on the New Orleans Agency Seniority District Roster. Nothing gave Carrier the right to arbitrarily remove them from that roster. It is preposterous to think that an employe who has earned seniority rights to work on a given district has no assurance whatsoever against Carrier arbitrarily stripping him of those valuable rights.

The authors of Awards 7420 and 11040 read into the Agreement rights which were never granted the Carrier and which the Carrier has not held sole control over since the Agreement was adopted. The present Referee clearly understood the proposition that rights plainly granted in one section of an Agreement will not be denied by implication in another. (Awards 2490 and 6732.) A principle that the authors of Awards 7420 and 11040 obviously failed to recognize or consider.

Award 13853 correctly construed the Agreement and requires nothing more than was intended when the parties agreed that "The seniority districts and rosters enumerated in Rule 4 may be subdivided or consolidated by mutual agreement between the Manager of Personnel and the General Chairman, in which event records of employes affected will be transferred without change."

The dissent is but a rehash of the arguments arising in the case. It does not detract at all from the thorough analysis of the Rules and Awards involved which the Referee made in rendering his most proper decision.

**D. E. Watkins**
**Labor Member**
**11-3-65**