



**Award No. 15785**  
**Docket No. CL-16141**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John J. McGovern, Referee**

**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

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

(a) The Carrier violated the Agreement when it failed and refused to assign Mr. B. S. Cadle, Head Computer Operator, in the Operating Department Computer Center, to the Head Computer Operator position advertised in Bulletin No. 1, of July 7, 1964. In lieu thereof, this position was assigned to Miss A. R. Bond of the Accounting Department Computer Center of a separate Seniority District.

(b) Carrier shall now assign Mr. Cadle to the position as advertised in Bulletin No. 1, of July 7, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case holds a position and the Southern Railway Company.

In the year 1956, the Southern Railway announced its intention to install a Type IBM-705 electronic data processing machine and certain auxiliary computing equipment in their General Office Building, Atlanta, Georgia.

In November of that year, two mutually acceptable, separate, Memorandum Agreements were entered into with respect to the rights of clerical employees to positions that were needed and subsequently established to operate this new equipment.

One of these agreements provided for the establishment and maintenance of a separate seniority district for the Office of Auditor, Computer Accounting, on the fifth floor of Southern's General Office Building in Atlanta, Georgia. Miss A. R. Bond is carried on the seniority roster of this seniority district with a seniority date of December 17, 1956. A copy of this seniority roster is attached as Employees' Exhibit A. Copy of the Memorandum Agreement covering these employees is attached as Employees' Exhibit C.

ticular, vacancies covered by this agreement will be filled in accordance with principles defined in Rule 15 (exclusive of the notes) in the following manner, except that merit, capacity and qualifications being sufficient, seniority shall govern:

The officer in charge where vacancy occurs will, within two days, bulletin such position to all employes of the group or class on the seniority district in which vacancy exists. Bulletin to show location, title, rate of pay, and preponderating duties of position, number of hours assigned per day, and number of days assigned per week, subject to reduction in weeks in which holidays occur by the number of such holidays. Employes desiring such position must, within five calendar days (except in General Offices at Washington, Cincinnati, Atlanta, and Chattanooga, where the period shall be two working days) after bulletin is posted, make written application to the officer issuing the bulletin. The bulletin shall expire at twelve o'clock midnight on the fifth or second day, as the case may be. From these applications the senior qualified employe shall be assigned to the position within fifteen (15) days, and bulletin will be posted giving name of successful applicant. If requested, copy of all bulletins will be furnished Local Chairman."

The following Memorandum of Understanding was entered into by Carrier and its employes represented by the BofRC on July 25, 1957:

"WHEREAS, Rules 9 and 14 of the Clerks' Agreement do not specify the amount of advance notice to be afforded employes affected when consolidations or transfers of positions from one clerical seniority district to another are to be made, and

WHEREAS, the parties agreed that advance notice is desirable in such cases,

**NOW, THEREFORE, UNDERSTOOD AND AGREED THAT:**

In the application of existing Rules 9 and 14 of the effective Clerks' Agreement, when consolidations or divisions of offices or departments, or transfers of positions from one seniority district to another are to be made, as much advance notice as possible, but not less than sixty calendar days, in writing will be afforded to affected employes of the intended consolidation, division, or transfer. It is agreed that the posting of such notice in the offices or districts affected, with copy to the General Chairman, will constitute compliance with this understanding.

The provisions of this Memorandum shall become effective August 15, 1957, and shall not apply to any consolidations or transfers originating prior to that date."

(Exhibits not reproduced.)

**OPINION OF BOARD:** Two seniority districts were established in November, 1956 to cover new computer operations in Atlanta, Georgia, one being known as the Computer Accounting Center, the other as the Operating Department Computer Center. Because of the acquisition of new and improved com-

puter equipment, Carrier on February 27, 1964, gave notice to the Organization that these two offices and seniority districts would be consolidated. The notice invited the Petitioner to discuss several questions relative to the consolidation, conferences pursuant thereto taking place on April 21, 22 and 23rd. Carrier offered an agreement governing seniority in the consolidated district, but the Petitioner rejected it making several counter-proposals containing "numerous protective provisions as well as a so-called guarantee of employment, a wage increase (shift differential) and a proposal for stabilization of employment." No agreement was concluded, the consolidation becoming effective April 27, 1964 pursuant to the notice of February 27, 1964.

Claim was filed on behalf of Cadle who contends that he should have been appointed to the position of "Head Computer Operator" instead of Miss Bond. She had seniority in the "Computer Accounting Center" with a date of December 17, 1956; Cadle had seniority in the "Operating Department Computer Center with a date of May 28, 1960. On the roster covering the consolidated district, Bond out-ranked Cadle.

The precise question to be determined in this case is whether the Carrier's action in unilaterally consolidating the two districts constituted a violation of the Agreement. Petitioner avers that such a consolidation could only be accomplished by agreement between the parties and relies principally on Rule 5 of the basic contract, the pertinent portion of which reads as follows:

**"RULE 5.**

**SENIORITY DISTRICTS**

(Revised, effective October 1, 1938)

Seniority for each of the various groups or classes of employees embraced in this agreement shall be as follows:

GROUP L. Clerks. Seniority districts for each classification in this group as now established will remain as now constituted unless additional separate seniority districts be established in departments or sub-departments in general or district offices by agreement between management and duly accredited representatives of the employees. It is understood that when necessary to establish such additional separate districts, the matter will be promptly handled."

Carrier bases its action in this case on Rules 9 and 14 of the Agreement, as well as the Mediation Agreement of July 25, 1957. Rule 9 is captioned "Transferring With Position From One Seniority District to Another (Revised, effective October 1, 1938)." Rule 14 is captioned "Consolidation or Division of Offices or Departments (Revised, effective October 1, 1938)." The Mediation Agreement of July 25, 1957 provides:

"WHEREAS, Rules 9 and 14 of the Clerks' Agreement do not specify the amount of advance notice to be afforded employees affected when consolidations or transfers of positions from one clerical seniority district to another are to be made, and

WHEREAS, the parties agreed that advance notice is desirable in such cases,

**NOW, THEREFORE, UNDERSTOOD AND AGREED THAT:**

In the application of existing Rules 9 and 14 of the effective Clerks' Agreement, when consolidations or divisions of offices or departments, or transfers of positions from one seniority district to another are to be made, as much advance notice as possible, but not less than sixty calendar days in writing will be afforded to affected employes of the intended consolidation, division, or transfer. It is agreed that the posting of such notice in the offices or districts affected, with copy to the General Chairman, will constitute compliance with this understanding.

The provisions of this Memorandum shall become effective August 15, 1957, and shall not apply to any consolidations or transfers originating prior to that date."

Rule 5 is a general rule concerned with existing seniority districts and the establishment of additional ones. Rules 9 and 14 are specific rules dealing precisely with the issue in this case, that is, the consolidation of seniority districts. It is axiomatic that special rules prevail over general rules. (Awards 12408 (Dolnick), 12632 (Seff) among others.) The language contained in Rules 9 and 14 and the Memorandum Agreement of July 25, 1957 clearly permit the action taken by the Carrier in this case. The language of the Mediation Agreement is clear and unambiguous and expressly deals with the subject of consolidations, the issue in this case. The only condition precedent that Carrier must meet prior to accomplishing a consolidation, is to give sixty days' notice in writing to the affected employes with a copy to the General Chairman. This was done. There is no requirement that there must be a mutual agreement between the parties as the Petitioner contends before a consolidation can be effected. We find that the Carrier's action in this case was in accord with the appropriate rules of the Contract as well as with the Memorandum Agreement of 1957. We will deny 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 was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty**  
**Executive Secretary**

Dated at Chicago, Illinois, this 28th day of July 1967.

**LABOR MEMBER'S DISSENT TO AWARD 15785,  
DOCKET CL-16141**

Award 15785, Docket CL-16141, is in serious error and I dissent thereto.

The Referee correctly states in the third paragraph of his Opinion that:

"The precise question to be determined in this case is whether the Carrier's action in unilaterally consolidating the two districts constituted a violation of the Agreement. \* \* \*."

The precise and only rule in the Agreement dealing with the subject i.e., Seniority Districts is Rule 5. It reads in part pertinent hereto as follows:

"Seniority districts \* \* \* will remain as now constituted unless additional separate seniority districts be established \* \* \* BY AGREEMENT \* \* \*." (Emphasis ours.)

Rule 5 expressly prohibits unilaterally changing the established seniority districts and **ONLY permits additional districts TO BE ESTABLISHED BY AGREEMENT.** The violation thereof should be quite apparent to anyone.

Rules 9 and 14 are correctly described in the Award as covering "Transferring With Position From One Seniority District to Another" and "Consolidation or Division of Offices or Departments" and the Mediation Agreement of July 25, 1957 (while dealing only with the matter of "advance notice") evidences that the subject of Rules 9 and 14 was consolidations or divisions of offices or departments and transfers of positions from one seniority district to another. Rules 9 and 14 will be reproduced in the printed award and they, neither separately nor jointly, or in conjunction with the Agreement of July 25, 1957, deal with the subject of Rule 5 — which, notwithstanding the erroneous award, plainly requires that additional separate seniority districts be established only by agreement and that otherwise the seniority districts will remain as constituted. There was no "transfer" of position from one district to another and there most certainly was no agreement for any "additional separate" or new consolidated district.

The Referee therefore simply failed, or refused, to properly consider the Agreement involved. The axiom he uses simply does not fit the case where the subject matter of the Rules are different. Rather the axiom that should have been stated and clearly controlled the dispute herein is:

"We adhere to the proposition that a valuable right cannot be abrogated by implication in one section of an agreement when such right was expressly and plainly granted in another section." See Awards 2490 and 6732.

The award is in serious and harmful error and should be shunned by all who take their obligation as neutrals seriously.

**D. E. Watkins**  
Labor Member  
8-14-67

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