

Award No. 15876

Docket No. CL-16290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

Interpretation

Serial No. 240

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5978) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, as well as Item 1 (a), (b) and (e) of the Agreement of February 25, 1964, covering the reorganization of the Carrier, effective March 1, 1964, when it failed to pay Claimant T. A. Duricky the rate of pay he was earning on March 1, 1964, as provided in the February 25, 1964 Agreement.

(b) Claimant T. A. Duricky, whose position, Symbol F-8, rate of pay \$534.57, was transferred from the Comptroller's Office, Cleveland, Ohio to Pittsburgh, Pennsylvania, be allowed his rate of pay of \$534.57 per month from March 9, 1964, and to continue for a period of two years, and at no time during this period of two years shall his earnings be reduced below the rate of \$534.57 per month as provided in the Agreement of February 25, 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 held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Effective March 1, 1964, the Carrier reorganized its operating department, sometimes termed the "line" as distinguished from its System General Office

Therefore, so far as the Carrier is able to anticipate the basis of the Employees' claim, the question to be decided is whether or not the Claimant is entitled to the protection of the Agreement of February 25, 1964, when he voluntarily elected to take a position paying a rate lower than the rate of his previous position, which position he declined to follow to Pittsburgh.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim before the Board is not as the above stated. Examination of the Record reveals that the individual Claimant, T. A. Duricky, retired May 29, 1964. There is no dispute between the Parties that this Claim involves the period of time between March 9, 1964, and May 29, 1964, both dates inclusive. When reference herein is made to the "Claim," it shall be deemed relevant only to the time period defined in the next preceding sentence.

The Parties are in agreement in regard to most of the "facts" out of which this grievance arose. On February 12, 1964, Claimant Duricky, who held Group 1 position, Symbol F-8, rate \$534.57, in the office of the Regional Comptroller, Cleveland, Ohio, was notified that effective at the close of his tour of duty on March 6, 1964, his position would be transferred to Pittsburgh, Pennsylvania, in accordance with Rule 3-E-1, due to the Regional re-organization of the Carrier effective March 1, 1964. On February 18, 1964, Claimant was requested to advise his Superior whether or not he would follow his position to Pittsburgh. Under date of February 25, 1964, Claimant advised that he would not follow his position to Pittsburgh. Effective at the close of his tour of duty, on March 6, 1964, Claimant's position was transferred to Pittsburgh. On February 25, 1964, a special agreement was entered into by and between this Brotherhood and this Carrier. This Agreement, known as the Agreement of February 25, 1964, was negotiated for the specific purpose of protecting those employees affected by the Regional re-organization of the Carrier effective March 1, 1964. Effective March 9, 1964, Claimant, who had clerical seniority from December 15, 1916, exercised his seniority on a position for which he was qualified by displacing Group 1 Clerk G. K. Conley from position F-10, tour of duty 8:00 A. M. to 5:00 P. M., daily except Saturday and Sunday, rate of pay \$476.77. Claimant retired on May 29, 1964.

The Record shows that the Duricky problem arose out of a major reorganization effected by the Carrier. Briefly, nine Regional Comptrollers' Offices were reduced to and absorbed by three of the existing nine. The Brotherhood alleges (and this was not denied by the Carrier) that the reorganization was effected quickly; that the first official notice received by the Brotherhood concerning the planned re-organization was contained in a letter dated February 6, 1964, from the President of the Carrier to the General Chairman; that the first informational meeting of the representatives of the Parties was held February 13, 1964; that the first meeting of said representatives for the purpose of negotiating changes in seniority districts and in regard to affording protective benefits to the affected employees was held February 20, 1964; that the final meeting of the negotiators was held February 24, 1964; and that the final agreement in regard to the re-organization was signed February 25, 1964, late in the afternoon. The Brotherhood's narrative of this sequence of events and happenings is accepted as correct, because — as indicated above — the Carrier did not deny that this factual narrative was correct.

Mr. Duricky had to make important decisions promptly while those superior to him were still in the process of negotiating. In our opinion, he was not — in

the light of then existing circumstances — voluntarily taking action to reduce his wages. Pressures of fast reorganization necessitated his making a hasty and (for him) vitally important decision.

Rule 3-E-1 of the Agreement is not directly related to his case; indirectly, it is, for it enabled Claimant to fill a position by displacement in his home seniority district. There is no contention Claimant did not accept a position for which he was qualified. (Emphasis ours.)

It appears that the dominant intent of the "Special Agreement of February 25, 1964" was that no employe would suffer financial loss as a result of the fast-moving reorganization of the Carrier. Item 1(a) thereof clearly so states. Item 1(a) does state that the general rule (or intention of the Parties) is subject to specific exceptions which are set forth in subsequent Item 2. We do not believe any of these specific exceptions is applicable to the Claimant, except "retirement," referred to supra. He did accept and received employment in a position for which he was qualified; he did not refuse to accept recall; he did not die, or resign from the service of the Carrier, nor was he dismissed for cause.

Early in the history of this Board, we held: "It is a recognized rule in the construction of contracts that where one or more exceptions to a provision are expressed no other or further exceptions will be implied." Award 2009. Twenty five years later, we note that this is still a legally respected rule in contractual interpretation.

We find insufficient evidence of mutually agreed upon past practice and custom to clarify the interpretation of the 1964 Special Agreement of the Parties.

Awards 14410, 14411, and 14412 are not deemed to be sufficiently analogous to resolve the issues in this case. The ICC, in its action in regard to cases of the Georgia & Florida Railway Company type stated: "Our action herein shall not be taken as a precedent for the action which we may take in the future under less compelling circumstances." (Emphasis ours.) See Finance Docket No. 21974. Also, the Georgia & Florida Railway Claims involved different factual circumstances, e.g., Award 14410 dealt with an employe who had a furlough status; Award 14411 was concerned with employes who declined to exercise seniority rights because of ill health; and Award 14412 was addressed to the problem of an employe who declined to exercise his seniority rights to any other position.

We are mindful of the fact that the argumentation presented by and in behalf of the Carrier is quite worthy of thoughtful consideration; however, after careful deliberation, the neutral referee does not find this argumentation to be sufficiently persuasive to justify a denial Award.

For reasons shown above, this Claim should be approved and allowed.

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 Employees involved in this dispute are respectively Carrier and Employees 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 allowed for the time period from March 9, 1964, to May 29, 1964, both dates inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Interpretation

Serial No. 240

Dated at Chicago, Illinois, this 24th day of October 1967.

CARRIER MEMBERS' DISSENT TO AWARD NO. 15876 DOCKET NO. CL-16290

A mere reading of the Opinion indicates that the decision of the Referee was undoubtedly swayed by the equities of the situation. This Board, however, as the Referee well knows, is not empowered to deal in equities, but to the contrary is limited to the interpretation of Agreements pertaining to rates of pay, rules and working conditions. No rule of the Agreement was violated by proceeding with the reorganization in the manner in which it was accomplished. In fact the parties in System Docket 71 construed an identical provision of a previous protective agreement as not supporting a similar claim.

The Opinion also indicates that the Referee engaged in speculation and conjecture by stating:

"Pressures of fast reorganization necessitated his making a hasty (for him) vitally important decision."

The record does not support such a statement. It is pure conjecture and the Referee may just as well have speculated that no important decision was involved for the Claimant as he apparently contemplated retirement and for this reason did not desire to follow his position and work to some other location.

Regardless of the circumstances — none of which was in violation of any provision of the Agreement — the action of Claimant was entirely voluntary in that he chose not to follow his position and work to some other location, but in lieu thereof, and in accord with the Agreement, voluntarily elected to exercise his seniority and displace on another position in his home seniority district.

G. L. Naylor
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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 15876

Docket No. CL-16290

Name of Organization:

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

Name of Carrier:

THE PENNSYLVANIA RAILROAD COMPANY

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Employees have asked for an interpretation of Award 15876 in accordance with Section 3, First (m) of the Railway Labor Act. For ready reference this provision of the Act is quoted fully:

"The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the Board upon request of either party shall interpret the award in the light of the dispute." (Emphasis ours.)

This Award was an adjudication of the merits of one specific Claim: that of Claimant T. A. Duricky, and it was properly processed for him by his Organization, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Mr. Duricky's claim was allowed and approved by this Board. Our files show that the Duricky claim was paid in accordance with the Award. Consequently, no ambiguity exists in regard to Award 15876. There is no issue raised as to whether Mr. Duricky was paid the correct amount of money allowed by the Board.

It appears that the request of the Brotherhood for an interpretation of Award 15876 may have arisen as a result of complaints of other personnel that they had grievances analogous to that of Mr. Duricky, but were not granted relief in a similar manner. The Board would have to indulge in blind speculation in regard to unknown specific grievances, without knowledge of the identity of the grievants, and without knowledge of the factual circumstances.

involved in any specific potential claim, in order to grant the type of relief the Brotherhood seems to desire. The Board is not empowered by law to do this.

The Duricky Claim involved only Mr. Duricky. This Claim was not made for "unnamed claimants" whose substantive rights were analogous to those of Mr. Duricky.

If Claims arose after the rendition of Award 15876, these should have been processed under the mandatory provisions of Section 3, First (i) of the Railway Labor Act.

Award 15876 is interpreted by reference to the language of the decision. It means no more, or less, than what it states. It is reaffirmed — without deletion or extension.

Referee Wesley Miller, who sat with the Division as a neutral member when Award No. 15876 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.