NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19988
Docket Number CL-19560

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station Employes
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7026) that:

1. The Carrier violated the Rules of the Clerks' Agreement at San Antonio, Texas, when, beginning October 13, 1970, it did, without a" agreement, arbitrarily abolish round-the-clock Group 2 Caller positions and assign all of the work to Group 1 employes.

2. Carrier shall now be required to compensate Callers A. Rodriquez, J. N. Grier, L. A. Breiten and R. C. Beaman, who became furloughed Group 2 employes as a result of Carrier's arbitrary action, eight (8) hours' pay each day beginning October 13, 1970, and continuing each work day thereafter, in addition to any other compensation Claimants might receive from Carrier until violation is corrected.

3. Carrier shall also be required to reimburse the aforementioned furloughed Claimants for any Hospital Association Dues and Dependents' Health and Welfare Insurance Premiums the furloughed Claimants may have to pay.

NOTE: Claim is also subject to subsequent or retroactive wage increases.

OPINION OF BOARD: The Organization contends that the Carrier violated the Clerk's Agreement when on October 13, 1970, without a" agreement, it did arbitrarily abolish four round-the-clock Group 2 Caller Positions end assigned all of the work to Group 1 employees.

The Carrier contends that on that day it initiated its "Pickle" system, or perpetual car inventory at San Antonio, which system obviates the need for on-the-ground check of cars formerly made by yard clerical employees. Since the agreement provides that a class one position is one where the occupant devotes three or more hours to class one work, that would indicate that it was proper to assign him up to five hours Group 2 or Group 3 work. The Carrier argued that this reassignment of the work is proper under Article 111 Section 1 of Agreement of February 7, 1965, which reads as follows: "The Organization recognizes the right of the Carrier to make technological, operational and organizational changes and in consideration of the protective benefits provided by this Agreement, the Carrier shall have the right to transfer work and/or transfer employees throughout the system."

It is not denied that the work of these "crew callers" had been in existence for 50 years. Nor is it denied that the employees proposed to the Carrier that the positions not be abolished, but that certain Group 1 work be assigned to the Group 2 positions, with an increase in the rate of pay of $1.00 per day, which the Carrier declined to do. Nor is it denied that the Carrier offered to transfer the Group 2 roster to the Group 1 roster, which offer the employees declined.

In the interpretations of the Agreement of February 7, 1965, Article 111 Section 1 (a), the following compromise interpretation is set forth:

> 1. Implementing agreements will be required in the following situations:
>
> (a) Whenever the proposed change involves the transfer of employees from one seniority district or roster to another, as such seniority districts or rosters existed on February 7. 1965. The underlined language "above quoted is intended to mean that seniority districts or rosters existing on the effective date of the February 7, 1965 Agreement are not to be changed insofar es the application of the aforesaid agreement is concerned, except as the result of an implementing agreement or other agreement acceptable to the interested parties."

It is clear from the record that no such agreement was reached in this case. The fact that such a distinction no Longer exists on this property does not diminish the requirement that before a transfer from one seniority district or roster to another takes place it has to be done by mutual agreement. See Awards 817614, 17617 (Dugan), 17364 (Yagoda).

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier end 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

The Agreement was violated.

A W A R D

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.

carrier Members' Dissent to Award 19988, Docket CL-19560

(Referee Alfred H. Brent)

By ignoring the principal facts in the case, the majority has arrived at an erroneous conclusion which has neither agreement language nor logic to support it. The Award is unenforceable because of the fact that the Board attempts to interpret the Agreement of February 7, 1965, over which it has no jurisdiction.

It is difficult to understand how the majority of competent persons could miss the point so completely except by deliberately ignoring and overlooking all of the pertinent facts and thereby deliberately creating an extremely unfair and restrictive condition not provided nor even contemplated by the parties to the applicable agreements.

The Board completely ignores the fact the applicable agreement does not provide any reservation of work between Group I, Group II snd Group III positions and employes. The majority completely ignores all of the awards cited by Carrier in support of its statement and position. See Third Division Awards 2011, 6140, 7167, 9047, 11988, 13218, 13220, 14050, 18621, and Award 17 of the Special Eoard of Adjustment No. 564 involving the same parties as are here involved.

The majority failed to recognize that Group I positions and employes have always participated in the performance of caller work in San Antonio.

The majority also failed to recognize Carrier's right to make technological, operational and organizational changes and its right to transfer work throughout the system without negotiations with the Clerks' Organization.

Carrier did not desire to transfer employes; however, when the Clerks' Organization complained, Carrier offered to permit claimants to follow the work in question, but the Clerks' Organization refused to participate in an arrangement that would permit claimants to follow the work they contend they are deprived of. If claimants experienced any loss, it is the direct result of the Clerks' Organization's refusal to negotiate.

In order to sustain the Employes' position, the majority then turns to the formal interpretations of Agreement of February 7, 1965, Article III, Section l(a), and sustains the claim on the finding that "It is clear from the record that no such agreement was reached in this case", apparently completely ignoring the fact Carrier was not obligated to negotiate an implementing agreement if in fact there was a transfer of work from one seniority roster to another, which there was not.

Great injustice is done and a monetary windfall to employes who have not experienced any loss of earnings results from the majority's failure to recognize the pertinent facts. applicable agreement provisions. the many awards cited supporting Carrier's action, and the Board's assumption of authori ty to interpret the Agreement of February 7. 1965. The Board's award is totally without agreement support, and for the reasons set forth herein, we dissent.

W. B. JONES

P. C. CARTER

H. F. M. BRAIDWOOD

G. L. NAYLOR

G. M. YOUHN