NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22947
THIRD DIVISION Docket Number CL-22941

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8779) that:

1. Carrier violated the provisions of the Washington Job Protection Agreement of May 1936 when it coordinated, in part, its facilities at Birmingham, Alabama, with that of SCL when beginning on December 23, 1977, it required the incumbents, regular relief employees and those employees working off of BEB and extra list to perform work of preparing and sending consists from Birmingham, Alabama, to the SCL computer located in Jacksonville, Florida.

2. Account violation of the Washington Job Protection Agreement, Carrier shall now be required to compensate the regular assigned incumbents, regular relief employees and those employees working the following positions from the REB and/or extra list; positions 91T, 92C, 93T, 94C, 85C, 86C, 87C, 70C and 83C an additional 50¢ per hour or $4.00 per day beginning December 23, 1977 and continuing each and every day thereafter which the Carrier requires. these employees to perform the duties of preparing and sending consists for the SCL Railway Company.

OPINION OF BOARD: A threshold issue to be resolved before reaching the merits is whether this Board has the jurisdiction to determine the grievance set forth in the Employes' Statement of Claim, Carrier argues that this Board lacks jurisdiction to decide the claim. It argues that the dispute should be referred to the Washington Job Protection Agreement Section 13 Committee.

Carrier also argues that the parties on the property have alternatively established an arbitration procedure pursuant to a Memorandum of Agreement adopted December 1, 1979, which provides that disputes involving "coordinations" are to be submitted to an arbitration board. Carrier makes this argument in spite of the fact that it has, at all times, in all levels of handling on the property argued that no coordination occurred..-

Challenges to this Board's jurisdiction in cases involving the Washington Agreement are not new. This Board has rendered many awards on the matter. In Award 11590 (Dorsey) our jurisdiction was challenged.

In that Award we described the inter-relationship between the Washington Agreement and the collective bargaining agreement. Therein we stated:

> "The Washington Agreement, to which the parties involved in this dispute are signatories, details a procedure, which if adhered to, supersedes the collective bargaining agreement and permits a carrier to transfer work to another carrier to effect a 'coordination' as that term is defined in Section 2(a) of the Washington Agreement."

We next outlined the contentions of the parties to be:

> "Petitioner contends that Carrier failed to comply with Section 5 of the Washington Agreement in that it made an assignment of employes which was not on the basis of an agreement between the carriers and the organizations of the employes affected by the 'coordination.' Therefore, Carrier having failed to comply with the Washington Agreement, the provisions of the collective bargaining agreement prevail and must be honored.
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> "Carrier, admitting that the transfer of the work was made to M-P employes in the absence of agreement between the carriers and the organizations of the employes affected, contends that any dispute concerning compliance with Section 5 of the Washington Agreement can only be resolved by recourse to the arbitration procedure detailed in Section 13 of that Agreement."

And resolved these contentions by holding: /-

> "It is uncontroverted that the action taken by Carrier in the abolishment of positions and transfer of the work to M-P employes was a 'coordination' within the meaning of that term as defined in Section 2(a) of the Washington Agreement. The issue narrows as to whether a carrier may derogate the existing collective bargaining contract in the absence of fully complying with the procedures and obligations attendant to a 'coordination' imposed by the Washington Agreement.

"As we read Section 5 of the Washington Agreement it imposes an absolute bar to carrier making an assignment of employes necessary to a 'coordination' unless it is done on the basis of an agreement between the carriers and the organizations of the employes affected. If the parties fail, through negotiations, to reach the indispensable agreement, which is a condition precedent to any assignment of employes, the burden is upon the carrier to have the dispute resolved by submitting it for adjustment in accordance with Section 13. It is the Carrier who seeks the privilege of effecting a 'coordination' with the protections afforded by the Washington Agreement. Therefore, it is the Carrier who must fully comply with the mandates of the Washington Agreement to establish it as a defense to what, otherwise, would be a violation of the collective bargaining agreement.

'Where, as in this case, the carriers and organizations of the employes affected failed, through negotiations, to reach an agreement as to the assignment of employes made necessary by the proposed 'coordination,' Carrier was not free to arbitrarily assign employes, as it unilaterally chose, and realize compliance with the Washington Agreement. Carrier had a remedy under Section 13 of the Agreement. Until that remedy was exhausted and Decision issued, Carrier was not free to effectuate the 'coordination.' Such a Decision may have directed the carriers to make an assignment of employes entirely different than that which Carrier unilaterally and arbitrarily did.

"Carrier having failed to comply with the Washington Agreement we find that Agreement is not a defense to Carrier's violation of the collective bargaining agreement. See and compare the following Decisions of referees appointed pursuant to Section 13 of the Washington Agreement: Docket No. 57, Docket No. 70 and Resubmitted Docket No. 70."

Our jurisdiction was also challenged when we considered Awards 15028 (Dorsey), 15087 (Roman), 15460 (Ives) and 15477 (Hamilton). These awards were exhaustably argued; all held that the Board had jurisdiction. We are persuaded by the soundness of those decisions.

Another jurisdictional argument raised by Carrier is that we ought not decide the dispute because of considerations of comity. It seems to us that a comity consideration, which is not an obligation to relinquish jurisdiction but a voluntary deference, is misplaced here because the Carrier consistently argued that it had the right to handle the work in the manner it was handled under the Agreement. In fact, Carrier argued that Award 18803

(Bitter) dealt with delivering consists to the SCL, and since this case merely involves the same subject, considerations of comity simply do not outweigh our interests in answering the questions raised.

Thus, we will accept jurisdiction. However, before reaching the merits of this case, there is another preliminary matter to resolve. Carrier contended that the claim was not filed in a timely manner. The claim was filed within sixty (60) days of December 23, 1977 alleging that the violation occurred when the Carrier instituted a link-up between SLSF computers and SCL computers. Carrier argues that this was not timely because the procedure wherein run-through consists were transmitted from the SLSF facility to a SCL facility at Birmingham, Alabama was implemented on February 1, 1976. It contends, therefore, that if there was a violation, February 1, 1976 is the date of occurrence which triggered it.

The event that occurred on December 23, 1977 was the institution of an additional procedure. At that time the run-through consists were transmitted not only to the Birmingham facility, but also to the SCL's Jacksonville, Florida administration offices. That is, the transmission to Jacksonville occurred simultaneously with the transmission intra-city to Birmingham. We are persuaded that the changes on December 23, 1977 are sufficient to create an additional "date of occurrence." It appears that on that date, work prepared by SLSF clerks at Birmingham was, for the first time, directly inputted into the SCL computer at Jacksonville, Florida. This is a significant difference and distinguishes it from work that had been plugged into SCL machines at Birmingham. For this reason, Carrier's time limit argument is rejected.

With regard to the merits, the Organization seeks 50¢ per hour or $4 per day on a continuing basis for a number of positions because they are compelled to send consists from Birmingham, Alabama on the SLSF to Jacksonville, Florida, a location on the SCL. The Employes admit that the Jacksonville transmission occurs simultaneously with the Birmingham transmission. It urges, however, that a 50¢ per hour payment isjustified because that is the amount other positions were adjusted when Carrier entered into an agreement with the Organization coordinating facilities with the Kansas City Southern and Louisiana &Arkansas Railway Company at Poteau, Oklahoma and Hope, Arkansas.

Examination of this latter agreement discloses that it specifically does not apply to Birmingham, Alabama. Moreover, the Organization has not argued that some other rule of the schedule agreement applies. It merely stated that part 2 of the Statement of Claim is payable by reason of the precedent established in the earlier coordination agreement. This is insufficient to make a case; the claim will be denied.

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 apprwed June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.