NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25372
Docket Number CL-25213

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9774) that:

Claim No. 1 - HV-1070 (Carrier File CC-180951

1a) Carrier violated the Clerks' Agreement, particularly letter agreement dated January 24, 1968 and Memorandum Agreement effective January 25, 1968, when they failed and/or refused to apply the protective provisions set forth therein to Clerk N. W. Taylor who was placed in a worse position as a result of positions being abolished and/or work transferred effective March 4, 1981.

1b) Carrier shall now be required to recompute Clerk Taylor's protective benefits as provided in the January 24 and 25, 1968 Agreements and allow Clerk Taylor the difference between those protective benefits allowed and those which should have been allowed beginning March 4, 1981 and extending for the term provided in the 1968 Agreements.

Claim No. 2 - W-1071 (Carrier File CG-18096)

(a) Carrier violated the Clerks' Agreement, particularly letter agreement dated January 24, 1968 and Memorandum Agreement effective January 25, 1968, when they failed and/or refused to apply the protective provisions set forth therein to Clerks G. M. Pauwels, J. F. Vinet and J. T. Gamble who were placed in a worse position as a result of positions being abolished and/or work transferred effective March 4, 1981.

(b) Carrier shall now be required to recompute Clerks Pauwels, Vinet and Gamble's protective benefits as provided in the January 24 and 25, 1968 agreements and allow them the difference between those protective benefits allowed and those which should have been allowed beginning March 4, 1981 and extending for the term provided in the 1968 Agreements.

Claim No. 3 - HV-1072 (Carrier File CG-18097)

(a) Carrier violated the Clerks' Agreement, particularly letter agreement dated January 24, 1968 and Memorandum Agreement effective January 25, 1968 when they failed and/or refused to apply the protective provisions set forth therein to Clerks R. E. Hayes, C. L. Sweat, D. G. Stoner, M. J. Sayen, M. A. Gatzke, Robert Lambdin, Jr., R. E. Schultz, R. A. Saffle and A. P. Yockey who were placed in a worse position as a result of positions being abolished and/or work tansferred effective March 4, 1981.

(b) Carrier shall now be required to recompute Clerks Hayes, Sweat, Stoner, Sayen, Gatzke, Lambdin, Schultz, Saffle and Yockey's protective benefits as provided in the January 24 and 25, 1968 agreements and allow them the difference between those protective benefits allowed and those which should have been allowed beginning March 4, 1981 and extending for the term provided in the 1968 Agreements.

OPINION OF BOARD: The instant case deals with three (3) separate Claims identified as HV-1070 (Carrier File CG-18095), HV-1071 (Carrier File CG-180961, and HV-1072 (Carier File CC-180971 which are nearly identical and which are herein being handled as one issue before the Third Division of the National Railroad Adjustment Board. The Claims allege that the Carrier violated the Clerk's Letter Agreement dated January 24, 1968, and the Memorandum Agreement dated January 25, 1968, when it refused to apply the protective provisions of such to the Claimants who were, because of this action on the part of the Carrier, placed in worse position as a result of positions being abolished and/or work transferred on March 4, 1981. The thirteen (13) Members of the Brotherhood who are Claimants in this case are identified by name in the three (3) Claims under the Statement of Claim cited above.

Carrier first argues that the claims should be dismissed on procedural grounds because the original claims were changed, on appeal, during their handling on the property. No evidence has been submitted to prove that the claims submitted were not the same as initiated on the property. Therefore Carrier's procedural argument cannot be sustained.

On merits the instant case centers on whether the Claimants' protective benefits beginning March 4. 1981, are covered by the Letter and Memorandum of Agreement dated January 24 and 25, 1968, or by the mote recent Protective Agreeement dated July 1, 1980.

In its arguments on property the Organization cites Article I, Section 5 of the July 1, 1980, Protective Agreement which states the following:

> "Nothing in this Agreement shall be construed as depriving employees eligible for benefits hereunder of benefits provided under any other protective agreement; however, there will be no duplication or pyramiding of benefits between this and other agreements. In instances where this and other protective arrangements or agreements are applicable to an employee, the Carrier will notify such employee in writing of the options available with respect to the benefits of this Agreement or other protective arrangements or agree- - , and such employee will have fifteen (15) days thereafter to signify in writing which protective agreement or arrangements will apply.* (Emphasis added)

It is the position of the Organization that this Agreement Article makes it clear that the 1968 Agreement was not cancelled and that the employes should have a choice between the benefits provided by the 1968 or the 1980 Agreements. The Organization further cites the Memorandum of Agreement between the parties dated February 18, 1981, which was signed pursuant to the Carrier's notice dated September 18, 1980, wherein the Carrier advised the Organization of four (41 phases of changes anticipated preparatory to the establishment of a Terminal Service Center at Walbridge, Ohio, and the need for implementing agreements to cover these phases. The February 18, 1981, Memorandum of Agreement dealt specifically with Phase III, effective on that date, and Phase IV, effective on March 4, 1981. At paragraph (5.) the February 18, 1981, Memorandum states the following:

> "The beneficial and employee protective provisions of the Protective Agreement effective July 1, 1980 are hereby adopted and made a part of this Agreement as fully as if they had been specifically stated herein.. (Emphasis added)

In other words, according to the Organization, the February 18, 1981, Memorandum of Agreement incorporated the July 1, 1980 Agreement into it "as fully as if (the protections therein! had been specifically stated herein., it a fortiori included all of the 1980 Agreement, including Article 1, Section 5 cited above which provided the employes herein party to this case the choice between the 1980 and the 1968 protections.

The position of the Carrier is that the intent of Article I, Section 5 of the July 1, 1980, Agreement must be understood in the context of the Carrier's letter to the Organization date&February 6, 1981, and in the context of the language of the July 1, 1980, Agreement taken as a whole.

The letter of February 6, 1981, states the following:

> "This will confirm our understanding and agreement that the protective benefits provided in the letter of understanding dated January 24, 1968 (so-called Oklahoma Conditions) will be applied to those employees affected by implementation of the Memorandum Agreement effective February 18, 1981 who are not covered by the provisions of the Stabilization Agreement revised effective July 1, 1980. It was further understood that the benefits provided herein will only be applicable for the length of time set forth in such Conditions but will not exceed the individual employee's length of service with the Carrier.=

This letter, per se, does not contradict the combined language found in Article I, Section 5 of the July 1, 1980, Agreement and Paragraph (5.) of the Memorandum of Agreement effective February 18, 1981, as the Organization correctly holds. The Board does not find the February 6, 1981, letter persuasive with respect to denial of the claim. In this respect, however, the Carrier itself asserts that "we do not rely solely upon the February 6, 1981 letter as being supportive to our position".

The Carrier further relies on the language of Article VII, Sections 1 and 4 of the July 1, 1980, Agreement in support of its position. These Sections state the following:

> "Any merger agreement now in effect applicable to the merger of two or more carriers, or any job protection or employment security agreement which by its terms is of general system-wide and continuing application, or which is not of general system-wide application but which by its terms would apply in the future, may be preserved by the employee representatives so notifying the carrier within sixty days from the date of this agreement, and in that event this agreement shall not apply on that carrier to employees represented by such representatives.

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"Were prior to the date of this Agreement the Washington Job Protection Agreement (or other agreements of similar type whether applying inter-carrier or intra-carrier) has been applied to a transaction, coordination allowances and displacement allowances (or their equivalents or counterparts, if other descriptive terms are applicable on a particular railroad) shall be unaffected by this agreement either as to amount or duration, and allowances payable under the said Washington Agreement or similar agreements shall not be considered compensation for purposes of determining the compensation due a protected employee under this agreement.' (Emphasis added)

Since none of the employes who are Claimants to the instant case filed within sixty (60) days from the date of the July 1, 1980, Agreement for protections under Article VII, Section 1 of the same with respect to the 1968 Agreement it is the position of the Carrier that such protections were forfeited and that the sole Agreement now in effect for the Claimants is that of 1980. Further, it is the position of the Carrier that:'

"(s)ection 4 of the same Article VII of the Employees' Protective Agreement of July 1, 1980 did, however, preserve displacement allowances in effect prior to the July 1, 1980 Agreement as a result of agreement of a type similar in nature to the Washington Job Protection Agreement, whether applying inter-carrier or intra-carrier but only for the duration of such displacement allowances and further such allowances would not be considered as compensation for purposes of determining the compensation due a protected employee under the July 1, 1980 Employees' Protective Agreement.. (Emphasis in original)

The response of the Organization is that both Sections 1 and 4 of Article VII of the July 1, 1980, Agreement were brought forth verbatim from the old February 7, 1965, Agreement and as such can have no application to the 1968 Agreement because the latter was negotiated after the 1965 Agreement and "all interpretations of the old agreement are carried forward into the new (1980) agreement when such is verbatim) unless there is a declared intent to the contrary=.

The crux of the instant dispute centers on this latter assertion by the Organization. If, in fact, Sections 1 and 4 of Article VII are to carry forward the meanings which they had in the Agreement from which they were verbatim lifted, as old Article VI, Sections 1 and 4 of that Agreement of February 7, 1965, their applicability to the instant dispute can be dismissed. There is no factual dispute that the Sections of Article VII of the 1980 Agreement at bar are, verbatim, Sections by the same number from Article VI of the 1965 Agreement. What evidence is there with respect to their meaning? Precedent from the Third Division of the National Railroad Adjustment Board contains a number of Awards which have dealt with the issue of the meaning of contract language when it is brought forth verbatim by the parties from a prior contract. In two Awards dealing with this Organization. but another Carrier, this Division of the National Railroad Adjustment Board has denied claims wherein the Organization argued, in those claims, exactly the opposite of what it is arguing here with respect to the meaning of Rules which are transferred verbatim from one contract to another. The Board has closely studied both of these Awards and the reasoning therein contained applies correctly to the instant case. The more recent of these Awards. quoting the older one, states the following:

"We think the rule is that where a portion of a written contract is carried forward verbatim into a new contract all interpretations of the old agreement are carried forward into the new unless there be a declared intent to the new contrary: (Third Division Awards 2679, 22038) (Emphasis added)

That the parties themselves agreed to such an arrangement is further supported by the language they negotiated in Rule IX, Section 1 of the July 1, 1980 Agreement. This reads:

"(i)t it understood and agreed that where a section of this Agreement is identical to a section of the February 7, 1965 Job Stabilization Agreement, any interpretations to such identical sections entered into between the parties signatory to said February 7, 1965 Agreement shall be applicable." (Emphasis added)

A study of the record shows considerable variance on the part of the parties with respect to their intent concerning the meaning of various Sections of the July 1, 1980 Agreement. They may wish to address these issues at future rounds of negotiations. The role of this Board, however, is to interpret contract language of record (First Division Award 21459; Third Division Awards 13491, 17474, 21265). On the basis of record evidence, the instant Claims are sustained.

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.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.