NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26069

THIRD DIVISION Docket Number TD-25654

George S. Roukis, Referee

PARTIES TO DISPUTE: (The Baltimore and Ohio Railroad Company
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(American Train Dispatchers Association

STATEMENT OF CLAIM:

"Question at Issue:

Did Carrier's elimination of one Train Dispatcher position on each of three tricks at Cumberland, Maryland on April 15, 1982, and transfer of certain remaining work to Grafton, West Virginia, constitute a 'major technological change' under the provisions of Article IX, Section 2(c) of the February 22, 1982 National Agreement made with the American Train Dispatchers Association."

OPINION OF BOARD: The basic facts in this case are as follows: by letter, dated January 13, 1982, Carrier notified the Organization that in accordance with the provisions of Section 4(d), Appendix 2 of the October 1, 1984 Train Dispatcher's Collective Agreement, it (Carrier) was serving notice of its intent to consolidate train dispatching territories at Cumberland, Maryland and Grafton, West Virginia. This proposed change involved the elimination of the WM Train Dispatcher positions on all three (3) tricks at Cumberland and the territory assigned to such positions consolidated with other Train Dispatcher positions at Cumberland or transferred to the Train Dispatching Office at Grafton on April 15, 1982. Carrier abolished three Dispatcher positions at Cumberland, Maryland and redistributed the work among four other Dispatcher positions; one remaining at Cumberland and three located at Grafton, West Virginia.

By letter, dated May 25, 1982, the Organization served notice consistent with Section 6 of the Railway Labor Act that it was requesting pay increases for the four Dispatcher positions whose workload was increased and for the two Chief Dispatcher positions which supervised these positions. Following a conference held on September 17, 1982, Carrier apprised the Organization, by letter, dated October 27, 1982, that the Section 6 request was barred by the moratorium provisions set forth in Article IX, Section 2(c) of the February 22, 1982 National Agreement. This section reads:

"(c) Any pending proposals relating to inequity wage adjustments are hereby withdrawn and no such proposals will be served prior to April 1, 1984 (not to become effective before July 1, 1984) provided that if a carrier party hereto proposes a merger or coordination or a major technological change, the organization may, in relation thereto, serve and progress proposals for changes in rates of pay on an individual position basis based upon increased duties and/or responsibilities by reason of such contemplated merger, coordination or major technological change.

NOTE: For purposes of this Agreement a 'major technological change' is one involving 5 or more employees subject to the pay provisions of the collective bargaining agreement between an individual railroad and the organization party to this Agreement."

The parties later met and discussed the merits of the Organization's request, but were unable to resolve their differences. The Organization then submitted an application with the National Mediation Board requesting third party neutral assistance and the matter was docketed as Case No. A-11324. (See NMB Letter, September 6, 1983). By letter, dated September 21, 1983, Carrier notified the National Mediation Board that the services of the NMB should not be invoked until dispute between the parties regarding the application of the moratorium provisions of the February 22, 1982 National Agreement was settled. Carrier served notice of its intent to file an Ex Parte submission with the Third Division and formal submissions by both parties subsequently followed.

In its Submission Carrier argued that the threshold question is whether its actions on April 15, 1982 constituted a major technological change as that term is used in Article X, Section 2(c), while the Organization asserted the aforesaid actions constituted a merger under Section 2(c). In essence, two distinct questions were posed before the Board.

Carrier maintains that absent a showing that a major technological change was responsible for the April 15, 1982 job abolishments and the consequent redistribution of work, the moratorium provisions of the February 22, 1982 National Agreement preclude any requests for inequity wage adjustments. It observes that the Organization has not demonstrated a cause-effect nexus between a major technological change and the impact of the job abolishments.

The Organization asserts that Article IX, Section 2(c), upon which the dispute is based, provides an exception to the moratorium provision, where a merger, coordination or major technological change takes place. It argues that the train dispatching territory previously assigned to the WM positions in Cumberland was separate, apart and distinct from the respective territories assigned to the serving positions and thus, by definition, constituted a merger when it was combined or united with the serving positions. In addition, it contends that the petition to the Board is premature, since Carrier did not handle the dispute in accordance with Section 153 First (i) of the Railway Labor Act.

In considering this case, the Board finds that neither a major technological change took place nor a merger implemented as those terms are understood in Article IX, Section 2(c) of the National Agreement. Upon the record itself, the actions implemented on April 15, 1982 did not flow from a major technological change as that term is defined in the "Note" appended to Section 2(c), and consequently, an exception to the moratorium preclusion is not present. Similarly, the record is incomplete as to the definition and intended application of the merger exception to the moratorium. We have no evidence that an action of this kind constituted a definable merger under the judicial precedents of this Board or the Interstate Commerce Commission. Rather what occurred on April 15, 1982 appeared to be an internal reorganization that was not a merger as that term is understood in the Railroad industry, especially under protective arrangements such as the New York Dock Conditions, et al. Accordingly, we must conclude that none of the exceptions stated in Article IX, Section 2(c) is present herein. As to the correlative procedural question raised by the Organization, namely that the petition was prematurely submitted to the Division, the Board finds that the Organization implicitly requested a determination of the substantive question as restated in its Submission. In fact, even its Rebuttal Submission focused on the merits issue. In any event, the record shows that the pivotal question was fully discussed by the parties.

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

That the parties waived oral hearings;

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.

A W A R D

Carrier's actions on April 15, 1982 did not constitute a major technological change under the provisions of Article IX, Section 2(c) of the February 22, 1982, National Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

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