Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29230
THIRD DIVISION Docket No. CL-29493
92-3-90-3-427

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (CSX Transportation, Inc. (formerly The Chesapeake and Ohio Railway Company)
(Transportation Communications International Union

STATEMENT OF CLAIM:

"Claim of G. C. Peace, claiming (8) hours pro-rata rate, $110.46 daily, 4:00 p.m. to 12:00 m.n. on October 5, 1985 account rearranged from #4 machine to #3 machine."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to 1980, the Chesapeake & Ohio Railway Company (C&O) (now merged into CSX since August 31, 1987) and the Lakefront Dock and Railroad Terminal Company (LDTR) operated separate ore dumping and coal loading facilities at Toledo, Ohio. Certain clerical and related functions at each of these separate facilities were performed by employees represented under separate contracts between TCU and the former C&O LDTR.

Upon due notice to the Organization, the C&O and LTDR facilities were transferred and consolidated, along with similar functions performed on the Conrail properties, effective April 1, 1980. In connection with that coordination, the former C&O Director of Labor Relations and the Former General Chairman entered into a Letter-Agreement dated March 28, 1980, reading as follows:

"As advised during our conference on this matter, the coordination of the Lakefront-Presque Isle facilities contemplates that the coal dumping in the coordinated operation will primarily be handled at the Presque Isle facility while ore will be handled primarily through the Lakefront facility. However, as further advised, it may become necessary, because of operating conditions, to handle coal loading at the Lakefront Dock facility and/or ore unloading at the Presque Isle facility. In connection therewith, and in connection with utilization of the Dock Clerk positions at the Presque Isle facility, it was understood that:

1. The positions of Dock Clerk-Ore C-25 and C-29, as well as the position of Swing Clerk C-373, will be retained in their present 'closed season' status and redesignated as 'Dock Clerk #2' with duties as are presently assigned positions of Dock Clerk on #3 and #4 Machines, pending the 'opening' of #2 Machine. In connection therewith, the hours of assignment for the position of Dock Clerk C-25 will be changed from 7 AM - 3 PM to 8 AM - 4 PM.

2. In those cases where no loading operations are in progress at either No. 2, 3 or 4 Machines, the incumbents of Dock Clerk assigned thereto may be utilized to fill vacancies on other Dock Clerk positions having the same starting time, or to assist the incumbents of such other positions within their assigned hours. In the event that the vacancies referred to herein cannot be filled as provided in this Section 2, the applicable provisions of the Clerks' General Agreement will apply in connection with such vacancies.

3. In the event that it would be necessary to operate the Ore Machine at Presque Isle on an occasional basis, the incumbents of Dock Clerk at No. 2, 3 of 4 Machines may be utilized to perform such work when no coal loading operation is in progress at their respective Machines. In the event that no Dock Clerk is available to perform service on the Ore Machine as contemplated in this Section 3, applicable provisions of the Clerks' General Agreement will be utilized to secure employes to perform service at the Ore Machine.

4. Employes so used in accordance with Sections 2 and 3 above will be paid the rate of pay of their own assignment or the rate of the vacancy worked or position assisted, whichever is higher.

5. The understandings reflected herein cancel and supersede any previous understandings in existence relative to the utilization of incumbents of Dock Clerk positions located at the Presque Isle facility, C&O, Walbridge, Ohio."

Less than three months after the coordination, the first of a number of disputes arose regarding the assignment of work by the Carrier to employees in the Dock Clerk classification at the Presque Isle facility. That lead case was decided by Public Law Board No. 3450, Award 37 on July 24, 1990. Because that decision is pivotal to our disposition of the present case, we quote it verbatim:

"STATEMENT OF CLAIM:

(a) Carrier violated Rule 24 of the Clerks General Agreement No. 9, and the terms of Memorandum Agreement signed March 27, 1980, and Letter Agreement dated March 28, 1980 when on June 23, 1980 it arbitrarily rearranged Clerk Raymond J. Gerrard from the position of Dock Clerk C-75, Coal Machine No. 4 to Coal Machine No. 2.

(b) Carrier shall now compensate Clerk Gerrard eight (8) hours pay at the pro rata rate for June 23, 1980, in addition to any other earnings for that day, account rearranged to from his regular assignment.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimant R.J. Gerrard was regularly assigned to the Dock Clerk Position, C-75, Coal Machine No. 4, at Carrier's Presque Isle facility in Toledo, Ohio. Claimant's work week ran from Sunday through Thursday, with rest days on Friday and Saturday, at a rate of $80.23 per day. On Monday, June 23, 1980 upon reporting for his tour, Claimant was notified that he was to perform his tour at Coal Machine No. 2 rather than his regular assignment at Coal Machine No. 4.

On June 23, 1980, the Organization filed the instant claim alleging that Carrier's action violated Rule 24 of the Clerks' General Agreement No. 9, the Memorandum Agreement of March 27, 1980, and the Letter Agreement dated the following day. Carrier timely denied this claim. Thereafter, the claim was handled in the usual manner, on the property. It is now before this Board for adjudication.

The Organization contends that Carrier's action constituted a rearrangement not in conformity with the requirements of Section 2 of the March 28, 1980 Agreement, and that, as a result, Claimant is entitled to compensation as provided in Rule 24(c) of the Clerks' General Agreement. The Organization notes that Section 2 permits rearrangement only 'to fill vacancies on other Dock Clerk positions having the same starting time, or to assist the incubments of such other positions within their assigned hours,' neither condition existing here.

The Organization urges that there was no Dock Clerk position assigned to work at Coal Machine No. 2 during Claimant's shift, and that Claimant was not rearranged to fill a vacancy within Section 2. Additionally, it points out that Claimant had not filed a letter of rearrangement. It concludes that Claimant is entitled to 'be paid a minimum day at the pro rata rate of his regular position, in addition to the amount to which [he is] entitled for working position to which arranged' within Rule 24(c). Accordingly, the Organization seeks that the claim be sustained.

Carrier, on the other hand urges that it acted in accordance with the various Agreements. Carrier maintains that it is within its authority to establish a position on machine No. 2 for one day, and that, Section 2 authorizes the utilization of Claimant to fill the vacancy thus established. In Carrier's view, Section 2 authorizes the shifting of Claimant to perform his tour at another machine.

In Carrier's view, Organization has failed to sustain its burden of proof. Carrier argues that the Organization did not, and can not, prove that the Agreement was violated when Claimant was asked to perform the same duties, during the same hours, for the same amount of compensation, merely because the machine was number 2 rather than 4. Accordingly, for these reasons, the Carrier asks that the claim be denied.

After careful review of the record evidence, We are convinced that the claim must be sustained. This is true for the following reasons.

First, the language of Section 2 of the March 28, 1980 Letter Agreement clearly provides that an incumbent of Dock Clerk positions No. 2,3 or 4 may be 'utilized to fill vacancies on other Dock Clerk positions having the same starting time...' when there are 'no loading operations...in progress' at his regularly assigned position. The facts set forth in the job description sheets for Monday, June 23, 1980, establish that there was no Dock Clerk scheduled to work on machine No. 2 during the midnight to 8 a.m. shift. (See Employes' Exhibit 'L') Accordingly, Claimant was not 'utilized to fill [a] vacancy...having the same starting time...' within Section 2. A vacancy is not created until an employe scheduled for the tour fails to appear for that tour. Thus, the conclusion is inescapable, that where no employe is scheduled, no vacancy within the meaning of Section 2 can occur. Claimant was not utilized to fill a vacancy.

Second, as a result of the foregoing, Claimant falls within the ambit of Rule 24(c). This Rule provides in relevant part:

> 'An employe rearranged to a position the starting time of which is the same as his own starting time, who has not filed letter of rearrangement for the position to which rearranged, will be paid a minimum day at the pro rata rate of his regular position, in addition to the amount to which entitled for working position to which rearranged.
>
> For the foregoing reasons, the claim must be sustained.'"

While the above matter was awaiting decision by Public Law Board No. 3450, a number of other similar claims were filed. Among those was the present claim filed by the Claimant on October 5, 1985, alleging Rule 24 violation when "rearranged by Company to work No. 3 Machine." Throughout handling on the property, the Carrier linked some twenty four of those related claims, specifically including the present claim with the case then pending on appeal which resulted in Public Law Board No. 3450, Award 37. In that connection, the final denial letter by the Director of Labor Relations, dated March 25, 1987, reads in pertinent part as follows:

> "This refers to your letter of May 11, 1984, File: CG-16411, your file: HV-995, in which claim was filed on behalf of R. J. Gerrald for allegedly being rearranged from Coal Machine No. 4 on June 23, 1980.

The following claims concern the same issue at this same location.

Carrier File	BRAC File
CG-20962	HV-1209
CG-20963	HV-1212
CG-20964	HV-1213
CG-20988	HV-1218
CG-20989	HV-1219
CG-21043	HV-1223
CG-21044	HV-1224
CG-21045	HV-1225
CG-21046	HV-1226
CG-21090	HV-1229
CG-21091	HV-1230
CG-21092	HV-1231
CG-21093	HV-1232
CG-21155	HV-1235
CG-21156	HV-1236
CG-21157	HV-1237
CG-21158	HV-1238
CG-21159	HV-1239
CG-21160	HV-1240
CG-21161	HV-1241
CG-21162	HV-1242
CG-21163	HV-1243

Claim HV-995 was declined for the following reasons:

'You are contending that the claimant in this matter was rearranged on the date of claim to perform service on a coal machine other than the machine to which the claimant is assigned.

Contrary to your contention in this case, there was no rearrangement effected on date of claim. It is a clear and undeniable fact that the incumbents of these coal machine positions are assigned the operation of all coal machines at this location under certain conditions and these conditions were existent on the date of claim. Therefore, no rearrangement whatsoever was made in connection with this matter.'

The above referenced claims are declined for the same reasons."

Subsequent to the issuance of Public Law Board No. 3450, Award 37, however, Carrier refused to consider that decision authoritative precedent, alleging that: 1) "the present case is materially different" and/or 2) "the reasoning in Award No. 37 was flawed and the conclusion erroneous."

It has long been recognized and accepted in labor-management arbitration generally, and in railroad industry arbitration specifically, that prior decisions involving the same facts, issues and Parties should be considered authoritative precedent. The legalistic common-law doctrines of res judicata and stare decisis do not technically apply in arbitration. But considerations of stability, predictability and good faith relations generally support the principle that final and binding decisions interpreting and applying a contract provision should be honored. If that doctrine causes "the shoe to pinch," the proper forum for obtaining relief is the bargaining table, not continual adjudication of ostensibly settled matters. In following such reasoning, the Board held in Third Division Award 2526 as follows:

> "Whatever may be said of the soundness of our construction of the contract, our conclusion is impelled by Award No. 1852. That involved a dispute between the same parties under the same contract and upon essentially indistinguishable facts. A different conclusion than we have reached would, in effect, overrule the decision in that Award. To do this would be subversive of the fundamental purpose for which this Board was created and for which it exists: settling of disputes. When a contract has been construed in an award the decision should be accepted as binding in subsequent identical disputes arising between the same parties under the same agreement."

To like effect the Board held in Third Division Award 3229:

> "This identical question has been decided in accordance with the views which we here express in two well reasoned opinions of this Board. Awards 813 and 2205. We have no question of the correctness of those decisions. Even if we did have, we would doubt the advisability of deciding the matter differently today. A construction of a rule which is not unreasonable should be maintained. For it is important that neither the carrier nor the employes should be left in uncertainty as to their rights."

Application of the foregoing principles requires that we sustain the present claim. The reasoning of Public Law Board No. 3450, Award 37, is not demonstrably flawed nor is that decision palpably erroneous. Carrier has not persuasively demonstrated that the facts of the present case are materially and sufficiently distinguishable to warrant a different conclusion.

For all of the above reasons, and for the reasons set forth in Public Law Board No. 3450, Award 37, which we adopt and confirm, the present claim must be sustained. For reasons not entirely clear on this record, the Organization's Ex Parte Submission reduced this claim from eight hours to seven hours and thirty-five minutes. Accordingly, the claim is sustained only to the extent of seven hours and thirty-five minutes.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.