

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES
ILLINOIS CENTRAL SYSTEM**

DISPUTE.—"Claim of the employees at stations on the line where the local office accounting work was transferred to the General Office at 63rd Street, Chicago, Illinois, under the jurisdiction of the Auditor of Passenger and Station Accounts that they should have the right to transfer with this work in accordance with the provisions of Rules 19 and 20."

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

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

The parties to said dispute were given due notice of the hearing thereon.

The carrier contested the jurisdiction of the Division, asserting that the dispute herein was not "pending and unadjusted on the date of the approval of this Act", within the meaning of Section 3 (1) of the Railway Labor Act of June 21, 1934, since the dispute had been handled "to a conclusion" under the provisions of the Railway Labor Act of 1926. On September 19, 1935, the Third Division, without the Referee sitting as a member, concluded that it did have jurisdiction over the dispute and so notified the carrier.

The Division was unable to reach a decision on the merits of the controversy. Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

FURTHER FINDINGS.—Prior to February 1, 1932, certain of the report, record, and accounting work of the carrier had been performed by employees in the offices and under the jurisdiction of local freight agents. Beginning February 1, 1932, the carrier, in pursuance of a preconceived plan, began to bring this work together under the jurisdiction of the Auditor of Passenger and Station Accounts in Chicago, at the carrier's 63rd Street Building. The work thus brought together is designated as the Centralized Station Accounting Bureau and is located on the 9th floor of the building in question. The office of the Auditor of Passenger and Station Accounts is located on the third floor of the same building.

By January 1, 1935, the carrier, in pursuance of the plan, had discontinued 83 positions at 76 local freight offices and had created some new positions—the record does not indicate how many—in the Centralized Station Accounting Bureau in Chicago.

The positions in the offices of the local freight agents affected by the reorganization had been included under many different seniority districts. The work, when brought into Chicago under the jurisdiction of the Auditor of Passenger and Station Accounts, fell under a new and distinct seniority district—a seniority district confined to the Auditor's office. The carrier filled the new positions in the Centralized Station Accounting Bureau from the seniority roster of the Auditor's office. When the carrier first began to put this plan into operation, it communicated with approximately twenty local freight agents, asking whether there were well qualified men in the local offices who would be available for some of the new positions in Chicago. The carrier asserted that, with a single exception, the men formerly engaged in doing the work in question preferred not to come to Chicago. It is noted, however, that the carrier informed the agents that men electing to take such positions would be required to establish new seniority in the new seniority district.

Of the employees who were displaced by the reorganization of work 38 in the exercise of their seniority rights secured other positions at a higher rate of pay, 30 were compelled to accept positions at a lower rate of pay, 5 were replaced at the same rate of pay, 2 were and continued on sick leave, 6 left the service of the carrier, and 2 were dismissed for cause. The record does not indicate how many employees with junior seniority rating, if any, were completely pushed out of service.

To a considerable extent, the accounting work brought into the central bureau was functionalized. When the work was being performed at the local offices, each employee was required to carry on all phases of the work. In the central bureau the work was so reorganized that to a considerable extent, a given employee specialized in a single phase of the work. Moreover, much of the work brought into the central bureau was accomplished by the use of accounting machines. Also, prior to the reorganization, each employee performing this type of work at the local offices, in addition to this work, performed other duties. In many cases, the accounting work occupied a relatively small part of his time during a tour of duty. In the central bureau, however, each employee is engaged exclusively in the performance of accounting work during his tour of duty. In these circumstances, it is probably true, as urged by the carrier, that there are no positions in the Centralized Station Accounting Bureau which can be identified as the positions discontinued at the various local freight stations. It is also probably true, as urged by the carrier, that many, if not a majority, of the employees formerly performing this work in the local offices are not competent to perform the work as it is now organized. It is also admitted that the present centralized system of station accounting is more efficient and economical than the old system.

It cannot be denied, however, that a large amount of accounting work, previously performed at local offices in many different seniority districts, has been detached from these offices and concentrated in Chicago in a new seniority district.

RESPECTIVE POSITIONS OF THE PARTIES.—The petitioner contended that the carrier's course of action was in violation of the Agreement between the parties, bearing effective date of September 1, 1927. In support of this position, it relied particularly upon Rules 7, 19, 20, 49:

"RULE 7. *Bulletin.*—(a) New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employees affected for a period of seven (7) days in the districts where they occur; bulletin to show location, title, hours of service, and rate of pay. Employees desiring such positions will file their applications with the designated official within that time and an assignment will be made within five (5) days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. Bulletins for new positions and vacancies will be numbered consecutively for each year.

"(b) The following positions need not be bulletined under this rule, provided, however, that the seniority of such employee at the station or office where the vacancy or new position occurs will be given consideration in filling such vacancies or new positions:

"Employees engaged in assorting tickets, waybills, etc.; Employees operating appliances or machines for perforating and addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders, and work of a like nature; employees gathering or delivering mail and other similar work not requiring clerical ability; office boys, messengers, freight handlers, janitors, porters, elevator operators, laborers, and other employees similarly employed."

"RULE 19. *Transferring.*—Employees transferred with their positions from one seniority district or roster to another shall retain their positions and continuous seniority. Employees transferring from one seniority district or roster to another shall rank from date of transfer on seniority district or roster to which transferred."

"RULE 20. *Consolidations.*—When for any reason two or more offices or departments are consolidated, the transfers, new positions, and reductions arising shall be governed by the terms of this schedule."

"RULE 49. *New Positions.*—The wages for new positions shall be consistent with the wages for positions of similar kind or class in the seniority district where created."

In addition to the foregoing, the employees, at the oral hearing before the Third Division on August 19, 1935, cited and relied upon all of the seniority rules of the agreement referred to, Rules 3 to 23 inclusive, and made special reference to Rules 4, 5, and 6:

"**RULE 4. Seniority Rights.**—(a) Seniority rights of employees covered by Rosters No. 1 and No. 2 will be confined to each of the following seniority districts:

* * * * *

"Each Superintendent's Division will constitute a seniority district for Transportation and Maintenance of Way employees, except the freight stations enumerated below, each of which will constitute a separate seniority district: Chicago, Fordham-Markham, East St. Louis, Cairo, Evansville, Indianapolis, Rockford, Memphis, Omaha, Sioux City, Louisville, Paducah, Birmingham, Jackson, Miss., New Orleans, Stuyvesant Docks, and Baton Rouge.

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"Roster No. 1 will include clerical workers, machine operators, foremen, assistant foremen, and sub-foremen; also train and engine crew callers in districts where employed.

"Roster No. 2 will include station helpers and baggagemen (not including baggage helpers) excepting at the stations named in this section.

"(b) Seniority rights of employees by classes included in Item (2) Rule 1 and seniority rights of employees included in Item (3) Rule 1 will be confined to the department and point employed, except as provided by Rosters Nos. 1 and 2, and the following rosters will be maintained:

"*Roster No. 3.*—Office boys, messengers, chore boys, operators of certain office or station appliances and devices, telephone switchboard operators; and other employees doing similar work.

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"(c) Employees promoted from positions covered by any of the above rosters to positions covered by another of the above rosters will begin to acquire seniority from date of promotion and will retain seniority on roster from which promoted. The latter can be exercised only in case of reduction in force or abolishment of position.

"(d) The seniority districts and rosters enumerated in Rule 4 may be sub-divided or consolidated by mutual agreement between the division officers and the local committee, in which event records of employees affected will be transferred without change."

"**RULE 5. Seniority Rosters.**—Seniority rosters of all employees in each seniority district, showing names, locations, dates of employment, and dates of seniority, will be posted January 1st of each year, subject to claim for correction by employees interested. Unless a written protest is made within thirty (30) days from date of posting, dates will not thereafter be changed. Rosters will be accessible to all employees interested and copies furnished local chairmen and general chairmen upon request."

"**RULE 6. Promotion Basis.**—Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.

"**NOTE.**—The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

The carrier contended that, in the interest of efficiency and economy, it had the right to bring together station accounting work in one office; that in so doing it carefully followed the rules of the agreement between the parties; that it safeguarded the interests of the employees whose positions were discontinued in the various local freight offices; that the men formerly doing this kind of work in local offices would not have been competent to do the work as reorganized; and that in view of the nature of the reorganization, particularly in view of the fact that the positions as positions could not have been traced and identified, it would have been impracticable, if not impossible to have bulletined the new positions in the Centralized Station Accounting Bureau in the various seniority districts from which the work came.

CONCLUSIONS OF THE DIVISION.—Upon the record and the evidence, the Division arrives at these conclusions:

(1) The accounting work involved in the present dispute, prior to the reorganization in 1932 and succeeding years, was, under the agreement between the parties, performed by employees in the offices of local freight agents in many different seniority districts on the lines of the carrier; as such it was an important, if not an indispensable part of the various positions which were discontinued as a result of the reorganization; the right to the various positions, with the work of accounting included, was an important part of the seniority rights of the various employees concerned. The fact that in some cases the accounting work was only a minor part of the position in question is not material. When the work was taken from a position, the position was a new one, and, from the point of view of the employee, may have been less desirable even though carrying a higher rate of pay.

(2) All of the accounting work formerly performed by the employees involved herein at the local freight offices as a part of their respective positions reappeared in the office of the Centralized Station Accounting Bureau in some form, in an entirely different seniority district. The fact that the work has been functionalized in the Central Bureau, and that to a considerable extent it is now accomplished by accounting machines, is not pertinent. The important fact remains that accounting work disappeared from certain seniority districts and reappears in an entirely separate and distinct seniority district. It is not denied that these employees would have been entitled to bid for the new functionalized and/or machine accounting positions if they had been created in their own seniority districts.

(3) When the carrier moves an identical position from one seniority district to another, the employee, under Rule 19, is entitled to follow the position with unimpaired seniority rights. Indeed, the position so moved continues in the first seniority district until the parties, under Rule 4, make some agreement as to the district in which the position will be carried permanently. In the present situation, the carrier, although it did not move identical positions from one seniority district to another, did whittle pieces of work from positions in many different seniority districts and out of the parings create new positions in an entirely new seniority district.

In the opinion of the Referee, the carrier's course of action in reorganizing its station accounting violated both the letter and spirit of Rule 19. Certainly the carrier must not be permitted to do piecemeal what it has agreed not to do wholesale.

The Referee admits that there may be practical difficulties in taking steps to safeguard the seniority rights of the employees involved. He is convinced, however, that if the carrier will recognize its obligation under Rule 19, its representatives and the representatives of the employees can agree upon appropriate steps to be taken in carrying this award into effect.

AWARD

(1) It is the Award of this Division that the carrier shall bulletin positions in office of Auditor of Passenger and Station Accounts, Chicago, Illinois, created since February 1, 1932, out of work formerly performed in offices of Local Freight agents, on the several seniority districts where the work was formerly performed, and make assignments to such positions under the provisions of the agreement between the parties.

(2) The dispute is remanded for further negotiations between the parties as to what positions in the office of Auditor of Passenger and Station Accounts shall be bulletined, where they shall be bulletined, and the procedures to be followed in the bulletining of them.

(3) This Award shall not be construed to interfere with the right of the carrier to select its employees in terms of their fitness and ability as provided in Rule 6 of the Agreement between the parties.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 7th day of February 1936.