Award No. 3964
Docket No. CL-3872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY (M. P. CALLAWAY, TRUSTEE)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that,

(1) The Carrier violated the rules of the Clerks' Agreement when, effective at 7:00 A. M., Monday, May 5, 1947, it unilaterally and arbitrarily abolished the positions of Callers, Roundhouse, Columbus Shops, Columbus, Georgia, and transferred the work of these positions to the Yard Office, Columbus, Georgia, a different seniority district and a different department, and that therefore,

(2) Mechanical Department Callers Mr. H. S. Osborne, Jr., W. J. Lewis, and C. R. Lawrence shall now be restored to the positions of Callers, Columbus Shops, Columbus, Georgia, and paid for all lost time since May 5, 1947, at their regular salaries of $167.70 per month (204 hours per month) and that,

(3) Any and all other employes of either the Mechanical Department or the Operating Department, Columbus Yard Office seniority district shall be paid for all wage loss sustained and shall have any lost seniority restored, where they have suffered such loss, as result of the Carrier's action.

EMPLOYES' STATEMENT OF FACTS During a conference with Assistant to General Manager and Director of Personnel, Mr. S. L. Peek, on March 19, 20, and 21, 1947, that officer informally presented the proposition that the Committee agree to transfer the work of Mechanical Department Callers i. e., Callers who were charged with the duties of calling the front end crews of trains, e. g., locomotive engineers, firemen, hostlers and hostler helpers, from that department to the Yard Office seniority District. The Committee pointed out that this work was properly assigned and did not approve same. Nothing was presented in writing on same and nothing therefrom was heard until bulletin was issued under date of May 1, 1947, that the three positions of callers occupied by Messrs. H. S. Osborne, Jr., W. J. Lewis and C. R. Lawrence would be abolished and their seniority transferred to the seniority roster in the Transportation Department of the office of General Yardmaster. Copy of this bulletin is hereto attached, is self explanatory and is identified as Exhibit "A".

the employes in seniority sequence, and when divisions are made a separate roster for each seniority district will be issued, listing employes in seniority sequence in each district."

POSITION OF CARRIER: The Carrier contends that this was handled in strict accordance with the Clerks' Agreement and under the rule quoted above. There is no rule in the current Clerks' Agreement other than the rule above quoted pertaining to a move of this sort, nor is there a rule prohibiting the transfer of work from one seniority district to another, but the above quoted rule contemplates just such a circumstance and clearly provides for the seniority of employes affected—in this case the six Crew Callers—when work is transferred from one seniority district to another if **for any reason** offices or department are **consolidated** or divided. In the above instance certain portions of the office and work of the Mechanical Department were consolidated with that of the Yard Office.

Exhibits not reproduced.

OPINION OF BOARD: On February 21, 1944, three caller positions were maintained in the Columbus Yard Office, Columbus, Georgia, in seniority district No. 4, confined to that yard, the duties of which were to call both head end and rear end crews. On that date, by reason of increased traffic brought about by the war, the Carrier increased its crew calling force by three, assigning the additional callers to the Mechanical Department, in a different and system-wide seniority district, and whose duty it became to call the head end crews, the Columbus Yard callers continuing to call rear end crews. The seniority of the claimants in the Mechanical Department, seniority district No. 5, Operating Department, dates as follows: Osborne, February 21, 1944; Lewis, February 20, 1945; Lawrence, January 18, 1946.

This situation continued until May 5, 1947, when the Carrier abolished the positions of crew caller in the Mechanical Department, after which date the duty of calling head end crews was assigned to crew callers in the Columbus Yard. Claimants were not dismissed from the service, but were placed on the seniority roster in the Columbus Yards, Osborne and Lewis being given the same seniority date as that they held in the Mechanical Department, and Lawrence being given a seniority dating of August 16, 1945. In making this change, the prejudice to the claimants, as they contend, consists in being taken off of a system-wide seniority list, and placed on one confined to Columbus Yards, and the disadvantage of an unfavorable position on the latter list, as compared with their position on the former. When the three caller positions were abolished the bulletin posted at the time contained this statement: "Those affected are privileged to exercise their seniority on junior employes," which the Carrier construes to mean that they could have exercised their seniority, if any, in the Mechanical Department. However this may be, the docket shows that claimants were placed on the seniority list of Columbus Yards, and at the date of this submission were also on the seniority roster or list of the Mechanical Department. It would seem that, in the circumstances here presented, the claimants are not entitled to be on two seniority lists, as that would be manifestly unfair to other employes on each of the two lists here involved. We conclude, therefore, that the claimants are only entitled to be on one seniority list, and the case will be decided on that assumption. Manifestly, if we should hold that claimants being on the two seniority lists, are there properly, and entitled to maintain their positions hereon, any claim of prejudice, based on seniority lists alone, falls to the ground. In such a situation claimants would be favored rather than prejudiced.

But the contention of the claimants is, that being entitled to be on only one seniority list in the same terminal, they are entitled to have that seniority on the system-wide seniority list in the Mechanical Department and they support this contention on the theory that work being established in one seniority district, and a seniority roster set up, under which seniority rights are acquired, that work, in the absence of an agreement therefor, cannot be transferred to another seniority district, and the persons affected transferred and placed on the seniority list of the district to which the work is transferred. They say that, aside from any prejudice growing out of comparative

positions on seniority lists, work cannot be transferred in that way, and that in doing so the Carrier violated the Agreement. In the instant case they do not deny the right of the Carrier to abolish work when the need therefor disappears, but they say that the need for the work they performed continued and could not be transferred to another seniority district, even though established in the same terminal.

The Carrier defends its action by relying on Rule 25 of the Agreement, providing for the consolidation or division of offices or departments, and then further contends that inasmuch as the work of calling crews was, prior to February 21, 1944, assigned to workers in Columbus Yard seniority district, the abolition of the three jobs then set up in the Mechanical Department, in the same terminal, was nothing more than returning the work to the place from which it was transferred, and that no rule of the Agreement was thereby violated.

We do not think Rule 25 of the Agreement can be applied to this case. There was no consolidation of any office or department. Work in the Mechanical Department continued. What was done was merely the transfer of three employes from one seniority district to another without their consent, when the work which they had been doing had to be performed by someone. Rule 25, in our opinion, was intended to cover a case, where, in good faith, the Carrier consolidated two or more offices or departments into one, or intended to set up two or more offices or departments where only one had existed before, and where, in both instances, the problem of seniority rights of employes was involved, and we do not think it can be extended to mere transfers of men or work from one department or office to another, and especially when the transfer is from one seniority district to another.

Assuming, as we do, that claimants are not entitled to be placed on the seniority roster of both the Mechanical Department and Columbus Yards, the question of which of the two rosters is the most favorable to the claimant becomes important. All seniority rights are important, and the Awards of this and other Divisions have gone far to protect employes in such rights. We are of the opinion that if the action of the Carrier in transferring the claimants to Columbus Yards, and placing them on the seniority roster of that yard, had the effect, as we think it did, to deprive them of acquired seniority rights in the Mechanical Department, then claimants were prejudiced, both because they lost rights in a system-wide seniority district, and were placed in a position on the Columbus Yards roster less favorable than that on the roster from which they were transferred, and in this respect we think that Rule 6 of the Agreement, as implemented by Rule 21 thereof, was violated.

And then, we are of the opinion that, under a long line of Awards of this Division, work once assigned by agreement to an office or department in a given seniority district, cannot, except by agreement, be transferred to another seniority district. In Award No. 1808 of this Division, it was held:

> "The Assignment of the clerical work to an employe in another seniority district was likewise a violation of the agreement, for it is well settled that a carrier in discontinuing a position, not only may not assign the work to those outside the scope of the agreement, but is not permitted to assign it even to those covered by the agreement if they hold seniority rights exclusively in another seniority district."

And Awards Nos. 610, 612, 752, 753, 756, 975, 1403, 1440, 1611 and 1685 of this Division were cited to sustain the holding. In a recent Award No. 3746, this Division quoted with approval the principal part of the quotation from No. 1808, and cited the following additional awards of this Division: Nos. 385, 973, 2354, 3271, 3506 and 3656. We do not believe we should now depart from these principles, for the value of Awards lies, to a great extent, in establishing principles, and in adhering to them, except, of course, in exceptional cases where their application is not possible. We hold, therefore, that when the Carrier, without agreement with interested parties, transferred the work which the claimants were performing in the Mechanical Department, to the Columbus Yards, in another seniority district, there was a viola-

tion of that part of Rule 6 of the Agreement which restricts seniority to certain districts. It has been held that a seniority district once established by agreement or understanding can only be changed in the same way, and when the Carrier, without agreement, shifted claimants and the work they did from one seniority district to another, it affected the seniority rights, not only of the claimants, but employes working in the Columbus Yards and holding seniority rights on the roster thereof. The implications and effects of the violation are widespread, which leads us to believe that the existing rule, long established, should be strictly followed.

It necessarily follows from our holding that claimants, and others who may be affected by the Carrier's action, are entitled to be reimbursed for time lost, occasioned solely by such action; but such reimbursement should be strictly limited to actual loss of time, resulting solely from the Carrier's action. There is no showing of loss of work, but we cannot say that there has not been such loss. If, since claimants were transferred to Columbus Yard, they have worked there, and lost no time due to the Carrier's action in thus transferring them, they are not entitled to any reimbursement. Any right of reimbursement for any interested party must depend on the factual situation as it exists, or has existed, on the property since the filing of this claim.

The Award will be that claimants be restored to the seniority list of the Mechanical Department in the position to which they are now entitled had they not been transferred to Columbus Yards, and that the work they did be returned to the Mechanical Department. And further that the claimant be removed from the seniority list of Columbus Yards. Reimbursement for time lost will be made under the limitations stated above, according to actual loss, if any, to be ascertained on the property.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Clerk's Agreement in the respects indicated in the Opinion.

AWARD

Claims (1, 2 and 3) sustained to the extent, and on the conditions stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H, A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.