Award No. 6309
Docket No. CL-6313

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective Agreement when, on January 2, 1951, it unilaterally moved timekeeping work, and timekeeper L. L. Burton from the seniority district of the Auditor, Texas Lines, Ft. Worth, Texas to the seniority of the Auditor of Disbursements, St. Louis, Mo., and concurrently therewith unilaterally moved the waybill revising work from the seniority district of the Auditor, Texas Lines, Ft. Worth, Texas, to the seniority district of the Auditor Revenues, St. Louis, Mo.

(2) Timekeeper L. L. Burton and the timekeeping work be returned to the seniority district of the Auditor, Texas Lines, Ft. Worth, Texas, until satisfactory agreement is reached and Timekeeper L. L. Burton be reimbursed for all expense incurred in moving his family and household goods from Ft. Worth, Texas to St. Louis, Missouri, including packing and crating at Ft. Worth and uncrating at St. Louis as well as the same reimbursement for expenses incurred in returning from St. Louis to Ft. Worth and in addition, be paid for time lost while moving, including time preparing to move, in both instances, and not exceeding ten working days with pay and subsistance expense not to exceed $7.00 per day while securing a place to live at St. Louis and at Ft. Worth.

(3) The waybill revising work be immediately returned and restored to the seniority district of the Auditor, Texas Lines, Ft. Worth, Texas.

(4) Mr. J. A. Tomlinson, Rate Clerk in the office of Auditor, Texas Lines, Ft. Worth, Texas and his successors be paid for all time lost, by reason of the removal of the waybill revising work to St. Louis, and penalty overtime for all additional time necessary

to perform this work had it remained as a part of and attached to, the position of rate clerk, until correction is made.

(5) Cecil Zdorak, Transit Revising Clerk, Position 479, in the office of Auditor Revenues, St. Louis, Mo., his successors and any others who may have been required to perform the work of Texas Lines waybill revising in the office of Auditor Revenues, St. Louis, Mo., be additionally paid for all time they were required to suspend work on their regular assignments to perform the Texas Lines revising work.

EMPLOYES' STATEMENT OF FACTS: On November 8, 1950, under his file 92-93, Mr. E. R. Bolt, Vice President and Comptroller, St. Louis-San Francisco Railway Company, wrote the General Chairman advising that timekeeping, payrolls and a small amount of waybill revising work, as well as related calcualitng, typing and miscellaneous clerical work would be transferred from the Ft. Worth Accounting office to the St. Louis accounting office effective January 2, 1951. (See Employes' Exhibit 1 (a). The accounting office at Ft. Worth referred to is the office of Auditor, St. Louis-San Francisco and Texas Railway Company.

On November 28, 1950 the Acting Chairman wrote Mr. Belt protesting the proposed transfer of work from one seniority district to another without agreement (See Employes Exhibit 1 (b)) and on December 19, 1950 sent Mr. Belt proposed Memorandum of Agreement to cover transfer of the timekeeping work and timekeeper (See Employes Exhibit 1 (c)) which he declined to sign. (See Employes' Exhibit 1 (d)). No agreement was ever proposed for transfer of the waybill revising work by either party.

Effective January 2, 1951 the Carrier proceeded to unilaterally transfer the work of timekeeping, payrolls and other work incident thereto as well as the timekeeper, who was Mr. L. L. Burton, from the office of Auditor, St. Louis-San Francisco and Texas, Ft. Worth, Texas to the office of Auditor Disbursements, St. Louis-San Francisco Railway Company at St. Louis, Missouri and coincident therewith transfer the waybill revising from the Office of Auditor, St. Louis-San Francisco and Texas Railway Company at Ft. Worth, Texas to the office of Auditor Revenues, St. Louis-San Francisco Railway Company at St. Louis.

On March 28, 1951 claims were filed with Mr. P. N. Davis, Auditor, St. Louis-San Francisco and Texas Railway Company for the timekeeper and the work attached to his position to be returned to his office and Mr. Burton be reimbursed for all loss of time and expense involved in moving to St. Louis and return to Ft. Worth. Also, for waybill revising work to be returned to the office of Auditor, St. Louis-San Francisco and Texas and employe who formerly performed this work be paid for any time lost and for such additional overtime as would have been required had such work remained on the Texas Lines. (See Employes' Exhibit 2 (a)). On May 31, 1951 claim was filed with Mr. Belt, on behalf of the employe in the office of Auditor Revenues, who was and still is required to suspend work on his regularly assigned position to perform the waybill revising work for such additional time as he was required to suspend work on his regular position. (See Employes' Exhibit 2 (b)).

These claims have been handled with Management up to and including Mr. C. P. King, Vice President, Personnel, the highest officer to whom appeals may be made, but not composed. (See Employes' Exhibits 3 (a) to 3 (h) inc.).

POSITION OF EMPLOYES: (1) The Carrier's action as shown in "Statement of Facts" is violative of the rules of the Clerks' Agreement with carrier governing hours of service and working conditions of employes, effective January 1, 1946 and supplemental agreement of July 15, 1949 40-Hour week rules), copies of which have been filed with your Honorable Board and by this reference thereto are made a part hereof.

from Fort Worth to St. Louis, which was furnished, as evidenced by photostatic copy of original waybill attached as Carrier's Exhibit "Q". Mr. Burton was also furnished free transportation for himself and dependent members of his family.

The Carrier met its obligations under Rule 66 and for the Board to allow claims for moving expenses and subsistence allowance here presented, it would be necessary to go beyond the agreement rules. This Board has many times stated that it does not have that authority.

The Carrier firmly believes that it acted within its right in making the disputed transfer of the work, position and employe from Fort Worth to St. Louis. Further, that such transfer was accomplished in conformity with the effective schedule agreement and the evidence introduced clearly establishes that the organization by its past actions, statements in submissions to this Board and in correspondence with the Carrier, has demonstrated its agreement with the Carrier's interpretation of the agreement.

The Carrier respectfully requests the Board to find that it did not violate the working agreement between the parties as claimed. If, however, the Board should sustain any part of the employes' claim with respect to the waybill revising work, the Carrier's offer of June 20, 1951 to permit an additional qualified Texas Lines employe to transfer to St. Louis as a revising clerk should terminate any monetary claim subsequent to that date.

All data used in support of the Carrier's position have been made available to the employes and are made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Carriers, as of November 8, 1950, notified the Organization that, as of January 2, 1951, certain of their work would be transferred from Fort Worth to St. Louis. On January 2, 1951, without having made any agreement with the Organization in regard thereto, this work was transferred from the seniority district of the Auditor, Texas Lines, Fort Worth, Texas. It consisted of timekeeping and payroll, together with the calculating, typing and miscellaneous clerical work incident thereto. This work was transferred to the seniority district of the Auditor of Disbursements, St. Louis, Missouri. At the same time Carriers transferred some way bill revising work, together with the calculating, typing and miscellaneous clerical work incident thereto, to the seniority district of the Auditor Revenues, St. Louis, Missouri. The total of the work transferred amounts to about 166 hours of which 108 covered the timekeeping, payroll and work incident thereto. This leaves 58 hours for the waybill revising, and work incident thereto, that was transferred. While the amount of time necessary to perform this latter is in dispute, there being evidence ranging from as low as 39 up to as high as 125 hours, we think that 58 hours more nearly reflects the amount of time needed to do the work of this character that was transferred. These figures all relate to a period of one month. It is to the transfer of this work from one seniority district to another, without an agreement so authorizing, that protest was made and from which this appeal was taken.

Incident to the transfer of this work Carriers, at his election to do so, moved Timekeeper L. L. Burton from seniority district of the Auditor in Fort Worth, Texas, to the seniority district of the Auditor of Disbursements, St. Louis, Missouri. As a result Burton moved himself, and his family, from Fort Worth to St. Louis. Claim is made on behalf of Burton for expenses incident thereto.

In the beginning these Carriers had the inherent right to have their work performed wherever they might desire and they still have this right, except as they have restricted themselves by collective bargaining agreements with their employes.

Rule 5 of the parties' Agreement, covering "Seniority Districts" provides:

"Seniority district shall be as follows:

"Accounting Department

* * * * *

"Auditor Disbursements"

"Auditor Revenues

* * * * *

"Auditor, Texas Lines"

We have often said that positions or work may not unilaterally be removed from the confines of one seniority district and placed in another. As stated in Award 4076: "The transferring of work from one seniority district to another is a violation of the seniority rights of the employes in the district from which the work is taken." See Awards 1808, 2050, 3964, 5397 and 6066 of this Division.

But Carriers depend on Rule 23 (a) of the parties' effective Agreement as authorizing them to do what they did. Rule 23 (a) provides:

> "Employes may follow their positions when same are transferred from one seniority district to another. The incumbents shall have prior rights to the positions to be transferred, if they elect to accompany same. Those electing not to follow their position may exercise their seniority rights as per Rule 21 and their positions will be bulletined, first, in the seniority district from which they are to be transferred, and if necessary, second, in the seniority district to which they are to be transferred. Seniority of employes transferred under such circumstances shall be transferred to the new seniority district."

Rule 23 (a) is a permissive rule and grants to an employe certain rights when the work of his position is transferred by Carriers from one seniority district to another. Carriers, in view of our holdings, no longer had the inherent right to transfer work from one seniority district to another, and could only do so if authorized by the Agreement. We think, standing alone, Rule 23 (a) might be construed to have that implied effect. See Award 6066 of this Division. But all rules of an Agreement relating to a subject must be read and construed together in order to get the correct intent and meaning thereof. Here the "Note" to Rule 5, "Seniority Districts" expressly provides:

> "The above seniority districts are subject to change only when so agreed by representative of Railway and General Chairman."

Certainly this "Note" leaves nothing in doubt. It expressly states that what was here done cannot be properly done except by agreement. What Carriers did was in violation thereof.

As stated in Award 756:

> "On the admitted transfer of the work from one seniority district to another without agreement of the parties, the Board cannot do otherwise than find that the last paragraph of Rule 21—the seniority district rule—has been violated."

See Awards 1711, 5396 and 5397 of this Division.

But Carriers say they only did what they have always been doing in this respect and that the Organization has interpreted the rule in the same manner and never protected Carriers' doing so. In this respect it points to certain parts of the Organization's presentation of its position in the dockets on which this Division's Awards 756 and 1794 are based. It is true that certain statements therein, taken alone and separate from the whole presentation, would so indicate but it is most significant, in this respect, what the referee therein stated in his opinion. He said:

> "The record in this case discloses that the new seniority district and roster designated as * * *, was established by agreement between the parties * * *."

We do not think the record shows it was always done without either an agreement or settlement nor, if done without such, that it went unprotested. But even if the Carriers did, and the Organization acquiesced therein and made no protest thereto, that would not be controlling here. We have often held when a rule is clear and unambiguous:

> "This continued violation of a rule does not change the rule. The acquiescence of the parties to this violation might operate as an estoppel, in so far as the collection of penalties is concerned, but it is not a bar to the enforcement of the agreement as made by either party to it."

Award 4501. See also Awards 3444, 4543, 5100, 5163, 5306, 5396, 5407, 5834 and 6308 of this Division.

As stated in Award 4543:

> "* * * if the parties' Agreement as it relates thereto is clear and unambiguous, then long continued practices do not prevent the Agreement from being enforced according to its terms * * *."

Having come to the conclusion that Carriers violated the parties' effective Agreement by transferring this work from one seniority district to another without agreement with the Organization authorizing them to do so, as the "Note" to Rule 5 provides they must, we come to the question of what part of the relief asked for by the Organization should be sustained.

As to item (1) of the claim we have already stated Carriers violated the terms of the Agreement by transferring the work as they did but we do not think that is true of Timekeeper L. L. Burton. He was not required to follow the work to St. Louis. It was optional with him. He could have stayed at Fort Worth. Therefore we cannot say Carriers violated the Agreement when Burton decided to exercise his rights.

As to item (2) of the claim we think the request should be sustained that the timekeeping and payroll work, together with all calculating, typing and miscellaneous clerical work incident thereto, that was transferred should be returned to the seniority district of the Auditor, Texas Lines, Fort Worth, Texas, until, if ever, a satisfactory agreement can be reached authorizing its transfer to some other seniority district. However as to Timekeeper Burton we do not think we can or should order his return to Fort Worth. He is free to do as he wants. He may not desire to return to Fort Worth. If he does then he can exercise whatever right he may have by reason of his seniority. The same would be true if he stays at St. Louis. As to the claim in behalf of Burton for expenses incurred incident to his moving we find no provision for its allowance in the Agreement. Burton lost no time from his work by reason of the move Rule 66 provides what expenses Burton was entitled to have paid when he moved and Carriers fully complied therewith. We find this part of claim (2) to be without merit.

Item (3) of the claim is meritorious and should be sustained.

Item (4) of the claim should be sustained to the extent of 58 hours per month but on a pro rata basis only. The penalty rate for work lost because it was given to one not entitled to it under the Agreement is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. See Awards 3193, 3271, 3277 and 3375 of this Division.

As to item (5) of the claim we do not think the facts here established bring it within a situation to which Rule 47 of the parties' Agreement has application. It is without merit.

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 Carriers violated the Agreement.

AWARD

Claims (1) Sustained as per Opinion and Findings.

(2) Sustained as per Opinion and Findings.

(3) Sustained.

(4) Sustained for 58 hours per month on a pro rata basis.

(5) Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of August, 1953.

DISSENT TO AWARD NO. 6309, DOCKET NO. CL-6313

The author of this Award and the majority have gone so far astray that exception must be taken thereto.

The conclusions are based on two incorrect premises:

(1) That the provisions of Rule 5—Seniority Districts, of which the quoted "Note" is a part of the governing rule.

Rule 5 plus the "Note" should have been readily recognizable as a rule of general import. Rule 23 (a), also a Seniority Rule, is equally recognizable as a special rule dealing with and applying to a particular situation. Contract principles require that, as between a general rule and a special rule,

the special controls the general. Special Rule 23 (a) and not General Rule 5 plus "Note" is the controlling rule and does preserve to the Carrier its inherent right to transfer work from one seniority district to another.

Assuming otherwise, namely, that these two rules, each a seniority rule, must be read and construed together in order, as the Opinion states, "to get the correct intent and meaning thereof."

Again, contract principles require that, when some of the terms of an agreement are inconsistent, such terms must be construed so that no part of the agreement will be disregarded or made meaningless. Rule 23 (a) has been made meaningless. See Award 6066.

(2) That the provisions of Rule 5—Seniority Districts—plus "Note" thereto, prohibit the actions taken by the Carriers in this docket.

Carriers made no changes in Seniority Districts. If it be said that when Carriers moved this work from one seniority district to another that such action changed seniority districts, language is being added to the rule. We seem to have lost sight of first principles. All that any seniority rule does is to divide work, on a seniority basis, which is made available by Carrier. Again, to say that the mere existence of a seniority rule has destroyed a Carrier's inherent right to have its work performed at any location it chooses is adding language to the rule. There is not in Seniority Rule 5, plus "Note" any direct or explicit prohibition of the Carriers' action in this dispute nor can this Rule be construed to prescribe such action implicitly.

The Award is clearly erroneous and should be treated as such.

/s/ J. E. Kemp

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ W. H. Castle

/s/ R. M. Butler