Award No. 6655

Docket No. CL-6514

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (CHESAPEAKE DISTRICT)

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

(a) That the Carrier violated and continues to violate the Clerical Agreement when, effective at 8:00 A. M., August 21, 1952, it did, without agreement, arbitrarily and unilaterally remove all Dining Car Department work from the agreed-upon Traffic and Accounting seniority rosters, out of and away from the Cincinnati Seniority District, and place the said work in the Ashland-Big Sandy District at Ashland, Kentucky, and

(b) That all the said work of the Dining Car Department be returned to the Cincinnati Seniority District and rosters from which removed and all employes who were forced to move account of the Carrier's arbitrary action be returned to their former positions, and

(c) That all employes who moved to the Ashland District in order to continue to work their positions be compensated for all expenses incurred or losses sustained as a result of the Carrier's arbitrary action until such time as they are returned to their positions at Cincinnati and placed in no less favorable position than they were in at the time the change was made by the Carrier, and

(d) That each and every employe of the Dining Car Department in the Cincinnati District who was required to suspend work on his regular position through the arbitrary removal of his work be compensated at the regular rate of his position on which employment was denied him, in addition to all other compensation received or due him, plus any expenses incurred by him as a result of the Carrier's action, and

(e) That each and every other employe in the Cincinnati District who was displaced—as result of the arbitrary removal of the Dining Car Department from the district and the resulting forced exercise of seniority under protest by employes of that department—be com-

pensated at the regular rate of his position, in addition to any and all other compensation received or due him, plus any expenses incurred by him as a result of the Carrier's action.

EMPLOYES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood a rules Agreement effective January 1, 1945, as subsequently amended, covering the craft and class of clerical, office, station, store, and related employes and work, which Agreement has been filed with the National Railroad Adjustment Board as provided in the Railway Labor Act as amended, and this Agreement will be considered a part of this Statement of Facts.

Prior to August 21, 1952, the "Dining Car Department" was located at Cincinnati, Ohio, which department was within and a part of the "Cincinnati District".

On February 27, 1952, we received Carrier's letter dated February 25, copy of which is attached as Employes' Exhibit "A".

The Carrier's letter, Employes' Exhibit "A", indicated that it proposed to move the Dining Car Department out of the Cincinnati District and to place it at Ashland, Kentucky, in a separate seniority district designated in the Agreement as "Ashland-Big Sandy District".

On the same date we received the Carrier's letter, February 27, 1952, we wrote the Assistant Vice-President—Labor Relations, copy of our letter being attached as Employes' Exhibit "B".

On February 29, we received Carrier's letter of February 28, in reply to ours of February 27, copy being attached as Employes' Exhibit "C".

The suggested conference date was changed at the request of the Carrier, and finally the parties met and conferred July 1, 2, and 3, again July 9, 10, and 11, and on this latter date the Carrier submitted two proposed agreements to cover the movement of the work from the Cincinnati District to the Ashland-Big Sandy District, copies being attached as Employes' Exhibits "D" and "E", which proposals were fully discussed. At the conclusion of the conference the Employes advised the Carrier that they could not accept the proposed agreements, but that they would give further study to the matter and would advise us promptly as possible when the Employes would be in position to confer further.

Further conference was arranged for July 24, at which time the parties met and the Employes submitted a proposed agreement, copy being attached as Employes' Exhibit "F". The proposal of the Employes was reviewed by the Carrier and then discussed; the Carrier then advised that it would not accept the proposal of the Employes, in view of which the Employes advised the Carrier that it had no right to move the work out of one seniority district into another except by agreement of the parties and that in view of its refusal to negotiate what the Employes considered to be reasonable provisions for the protection of their interests, the Employes expected the Carrier to honor the Agreement as it then existed and to keep the work at Cincinnati, Ohio, whereupon the conference adjourned.

On Thursday, July 31, 1952, the General Chairman was advised by the Cincinnati District Chairman that the Carrier was issuing notices and making provisions to arbitrarily and unilaterally move the Dining Car work from Cincinnati, Ohio (Cincinnati District), to Ashland, Kentucky (Ashland-Big Sandy District), effective 8 A. M., August 21, 1952.

We attach as Employes' Exhibits "G-1" through "G-14" copies of notices issued to the several employes involved, advising that their positions would be moved from Cincinnati, Ohio, to Ashland, Kentucky, effective August 21, 1952.

pertinent to the situation, because in the instant case there is a clean cut, unambiguous rule to govern—Rule 17.

There is one additional rule which is relevant—Rule 52 reading:

"RULE 52—FREE TRANSPORTATION WHEN MOVING

"Employes transferred by direction of the Management to positions which necessitate a change of residence will receive free transportation for themselves, dependent members of their families, and household goods, when it does not conflict with State or Federal laws. Free transportation of household goods will be limited to the C.& O. Railway."

This rule is intended to apply in conjunction with Rules 7, 17, and 23, providing for passes for persons and free transportation of household goods over the line of railroad where such can be done under State or Federal laws. The Carrier has not been called on to provide free transportation of household goods under Rule 52 in connection with the Cincinnati to Ashland transfer, but has furnished all passes for persons applied for.

In conclusion, the Carrier's position is that:

1. Rule 17 is plain and unambiguous in its purpose and coverage of this transfer.

2. Rule 17 was followed in all its particulars in making such transfer; likewise Rule 52.

3. Other rules referred to by the Employes have no relevancy which justifies the claim.

4. Awards cited by the Employes are not pertinent and controlling.

The claim should be declined.

All data submitted have been discussed in conference or by correspondence in the handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute presents the question whether the Agreement required conference and agreement or whether under Rule 17 the Carrier properly acted unilaterally in transferring 13 positions and certain Dining Car Department work from one seniority district to another.

For operating reasons, which are detailed in the Carrier's Statement of Facts, the Carrier decided to move its Dining Car Department Headquarters from the Cincinnati seniority district to the Ashland-Big Sandy seniority district.

This move involved the transfer of 13 positions from three seniority rosters on the Cincinnati seniority district to the Ashland-Big Sandy seniority district.

The Carrier gave notice to the General Chairman of the Organization of its intentions, laying out in detail the steps proposed to be taken and stating that the transfers would be made in accordance with Rule 17. The General Chairman protested and contended that the transfers could be made only upon conference and agreement. Conferences ensued at which proposed drafts of agreement were exchanged; but no agreement was reached. During these conferences certain matters outside the Scope of Rule 17 were proposed and

discussed by both parties; but upon ultimate disagreement, the Carrier acted unilaterally, following the procedures laid down in Rule 17.

Of the 13 positions involved, two incumbents elected to transfer with their positions (one under protest) and two more claimed right to transfer.

First. Except when an agreement provides otherwise, it is a function of management to determine where work is to be performed. The adoption of scope rules, the establishment of seniority rights and the distribution of work into seniority rosters and districts, however, constitute well established restrictions on this function of management.

Restrictions of this character are written into the Scope and Seniority Rules in this Agreement. Thus, in the absence of special agreement between the parties, these Rules specifically deny Carrier the right to create additional excepted positions or to transfer positions from rank and file to excepted positions [Rule 1 (f), (1) and (n)], to establish extra lists [Rule 3 (h)], or to make any changes in seniority districts [Rule 6 (c)] or in established seniority rosters [Rule 6 (e)].

And it is well established that rules such as these, by necessary implication, restrict a carrier's right unilaterally to move work or positions, in whole or in part, from one seniority roster or district to another (Awards 1808, 2585, 3746, 3964, 4534, 4653, 4667, 5091, 5413, and 6309).

Second. The parties to this Agreement have adopted three specific Rules covering the establishment or abolishment of zone or system bureaus (Rule 7), the transfer of positions from one seniority roster to another (Rule 17) and the consolidation or division of two or more offices, departments or seniority rosters (Rule 23).

Both Rule 7 and Rule 23 require conference between Management and the General Chairman not less than 30 days in advance in order to determine the status and rights of the employes affected. Neither of these two Rules furnishes any guide as to how the status and rights of the employes affected should be determined: this is left entirely to mutual agreement between Management and the General Chairman. Each of these Rules carries a cross-indexing "Note" which refers to Rule 17.

Unlike Rule 7 and Rule 23, Rule 17 contains no explicit requirement of conference or agreement and does contain five subdivisions determining the status and rights of the employes affected by the transfer of positions from one seniority roster to another.

Third All three of these Rules clearly contemplate and authorize action which involves transfer of work and which will affect the status and seniority rights of employes. Within their specific scope, therefore, these three Rules control the general provisions of the Agreement with respect to seniority.

Two of these Rules, Rule 7 and Rule 23, explicitly require conference and agreement upon the status and rights of the employes affected.

But since Rule 17 contains no such requirement, this is an indication that no such requirement was contemplated.

Moreover, the use of the words "when it is decided to make a bona fide transfer of a position" is another indication that unilateral action by Management was contemplated. The requirement of bona fides is an apt qualification of managerial decision, hardly of conference and agreement; and a decision to make a bona fide transfer clearly means a transfer based on operating reasons, which is an appropriate subject of managerial decision, hardly of conference and agreement.

Finally, when the action taken is within the scope of Rule 17, no special conference or agreement is necessary because, unlike Rule 7 and Rule 23,

Rule 17 lays out procedures and determines rights and so itself constitutes a definitive agreement in advance upon the status and rights of the employes who are to be affected by the transfer.

Fourth. We find nothing indefinite, uncertain or ambiguous in Rule 17. Past practices of the parties are therefore unavailing to vary its meaning.

However, the 20 odd instances of past practice shown by the record relate to actions taken outside the scope of Rule 17 such as consolidations, the establishment or abolishment of zone or system bureaus, the creation of new rosters or the abolishment of agreed rosters, the transfer of entire rosters to another seniority district, the intermingling of the work of two rosters, or combinations of these situations with the transfer of positions, all of which required conference and agreement by reason of the provisions of other rules.

Fifth. There remains only to consider whether the action taken by the Carrier here was action within the scope of Rule 17 and whether the requirements of Rule 17 were met.

It is abundantly established by the record that the decision to make these transfers was based on legitimate operating reasons and that the transfers were therefore bona fide.

It is also established by the record that the action taken by the Carrier was within the scope of Rule 17 and was therefore authorized. While it is true that other things may have been discussed in conference, the action ultimately taken by the Carrier involved no more than transferring positions from one roster to another. The Organization's argument that a transfer of positions involves a change of rosters or a change of seniority districts is untenable unless all positions are transferred, in which event the total transfer would amount to a consolidation or the abolishment of a roster or a district. Such is not the case here.

Sixth. Before acting unilaterally, the Carrier gave notice and participated in conferences during which proposed drafts of agreement were exchanged. This is interpreted by the Organization as a recognition by the Carrier that agreement was necessary.

Constant conference, as well as advance notice, is the better part of wisdom particularly where inconvenience or hardship to employes may be entailed. But this does not mean that surrender of a right to act unilaterally is the inevitable price of conference. The real question is whether the Carrier in conferring in fact admitted or recognized that amendment of the terms of the agreement was involved.

Upon the record before us, it is fairly established that the Carrier never receded from its original position that it could act unilaterally under Rule 17; and that, in conferring and seeking to reach agreement, the Carrier can be charged with no more than a desire to ascertain in advance whether its proposed method of handling would be considered by the Organization to be in compliance with the procedural requirements of Rule 17.

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 action taken by the Carrier was authorized by, and was in compliance with, Rule 17 of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.