

Award No. 7384
Docket No. CL-7341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader—Referee

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

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

(1) The Carrier violated terms of the current Agreement when on March 22, 1954, it unilaterally moved crew dispatching work at Salida, Colorado from Seniority District No. 24, Office of Master Mechanic, Grand Junction Division, to Seniority District No. 21, Office of Superintendent, Grand Junction Division.

(2) That the Crew Dispatcher work be immediately returned to Seniority District No. 24, Office of Master Mechanic, Grand Junction Division, and

(3) That Messrs. Norman Ream, C. S. Collins, W. H. Gowan, H. Fitzpatrick and Frank Parker, and any other employes who may be adversely affected, be paid full wage loss suffered so long as this violation continues. Reparation due employes to be determined by joint check of Carrier's payroll and other records.

EMPLOYES' STATEMENT OF FACTS: Prior to March 22, 1954, the Carrier maintained at Salida, Colorado, in Seniority District No. 21, the following positions in round-the-clock service 24 hours each day, seven days each week the titles thereof, rates of pay, hours of assignment, assigned rest days, incumbents and their seniority dates being:

title of position	Rate of Pay	Hours of Assignment	Assigned Rest Days	Incumbent	Seniority Date
Day Car Clerk	\$13.81	6 AM to 2 PM	Sunday and Mon.	Alex Renwick	6-1-41
General Clerk	12.69	2 PM to 10 PM	Thurs. and Fri.	P. H. Beauregard	9-6-48
Car Clerk	12.69	10 PM to 6 AM	Mon. and Tues.	John Aragon	9-6-50
1st Relief Clerk, working:		Thursday-General Clerk; Friday and Saturday-Assistant Cashier; Sunday and Monday-Day Car Clerk; Tuesday and Wednesday-rest days; incumbent-Frank Ronald			1-5-48
2d Relief Clerk, working:		Friday-General Clerk; Saturday and Sunday-Baggageman; Monday and Tuesday- Car Clerk; Wednesday and Thursday- rest days; incumbent-H. W. Standlift			11-12-43

All data in support of Carrier's position has been submitted to the Organization and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by Organization is reserved by Carrier.

(Exhibits not reproduced)

OPINION OF BOARD: It is contended by Petitioner that Carrier violated the current Agreement which became effective November 1, 1953, when on March 22, 1954, the Carrier moved crew dispatching work at Salida, Colorado, from Seniority District No. 24 to Seniority District No. 21 and that the Carrier be directed to return the crew dispatching work to Seniority District No. 24, and to conduct a joint check in order to determine wage loss sustained by the named claimants and employes who may have been adversely affected by the action taken.

Carrier supports its position on the theory that it proceeded under the provisions of Rule 21, which reads as follows:

"When work of a seniority district and/or a number of seniority districts is withdrawn and established within another seniority district, under a centralized bureau or department, the rights of the employes directly and indirectly affected will be established by negotiation and agreement."

and by the refusal of the Organization to compose the differences between the parties by proceeding under the provisions of Rule 21, thereby becoming in conflict of Award 6066 of this Division and citing from that Award the following:

"Rule 21 is a rule dealing specifically with the factual situation before us and is controlling over Rules 3 and 5 of the parties' Agreement, which are general in character. See Awards 4959, 4988, 5213 and 5220 of this Division. By the language used the rule does not restrict or limit the Carrier's right to handle the work as it thinks best but expressly recognizes that it may withdraw work from one seniority district and transfer it to another. The only condition it places upon Carrier's right to do so is that the rights of the employes directly and indirectly affected will be established by negotiation and agreement of the parties. * * *"

The Organization takes the position that there is a distinction between the situation considered in Award 6066 and the application of Rule 21 as the same applies to the instant case and points out and stresses that part of the Rule "Under a centralized bureau or department" and that the intent and purpose of this rule is clearly stated and it does not apply to a situation being considered here. Hence, that this rule has no application.

We are of the opinion that when the Organization was served with notice of Carrier's desire to negotiate under Rule 21, that it was incumbent upon the Organization to do so and its failure based on the theory that the Rule is not applicable, was not proper. It would seem that the Organization in this situation took an extremely narrow and technical view of the situation by its failure to negotiate and in view of this situation we feel that Carrier was within its right to proceed as it did. We fail to agree with Petitioner's contention that Rule 21 and Award 6066 should not have been considered by the Petitioner prior to its refusal to negotiate and in view of this these claims fail.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of July, 1956.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 7384

Docket No. CL-7341

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: The Denver and Rio Grande Western Railroad Company.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

This ex parte request for an interpretation of the provisions of Award 7384 presents a matter which we view to be strictly one of law under the provisions of the Railway Labor Act, as amended.

The request, as will be noted, presents an unusual situation, in that, apparently the parties have now reversed their respective positions. In the original consideration of this case by the Board it was the position of the Organization that the provisions of Rule 21 of the agreement did not apply and therefore the Organization refused to negotiate the matter. This Board found that the provisions of Rule 21 did apply and by reason of the failure of the Organization to negotiate a denial award was rendered. Now it is the position of the Organization that negotiation of these claims under Rule 21 should be held and Carrier refuses to negotiate the same. Hence, it appears to be the position of the Organization at this time that Carrier is violating the provisions of Rule 21 of the agreement.

This, we view, is not a proper matter for our consideration in an interpretation of Award 7384 but presents a new issue and, therefore, is not a proper matter for our consideration at this time. It will be noted that Award 7384 did not remand the same to the parties for negotiation but by reason of the fact that the Organization refused to negotiate as provided in Rule 21 the claims failed.

As stated, under the provisions of the Railway Labor Act, as amended, we can only consider this request for an interpretation to be the presenting of a new issue and hence not a proper matter for us to consider at this time.

Referee LeRoy A. Rader who sat with the Division, as a member, when Award No. 7384 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1958.