

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement by the following arbitrary actions:

(a) When, on May 17, 1954, without conference and agreement, it abolished the seniority district identified in Rule 4 as "Auditor of Disbursements—12th Street."

(b) By transferring positions, work and employes from the abolished seniority district to other seniority districts.

(c) By abolishing the seniority district identified in Rule 4 as "District Accountant—63rd Street" and establishing a new seniority district identified as "Auditor of Disbursements—63rd Street," composed of part of the positions, work and employes from the abolished seniority district identified as "Auditor of Disbursements—12th Street," and all of the positions, work and employes from the seniority district identified as "District Accountant—63rd Street," and

(2) Claim that all seniority districts be restored as constituted before the changes of May 17, 1954, were made, and

(3) Claim that all employes involved in or affected by the agreement violations be reimbursed for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood a Rules Agreement effective June 23, 1922, as subsequently revised, 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.

Under the rules of the effective Agreement between the Carrier and the Brotherhood, seniority districts with clearly defined limits are set up, and, among others, the following seniority districts are specifically provided for in Rule 4 of said Agreement, to wit:

with their positions and continuous seniority to the office and roster of the Auditor of Passenger and Station Accounts and four employees with their positions and continuous seniority to the office and roster of the Auditor of Freight Receipts, both transfers effective May 17, 1954, it is the position of the Carrier that the Carrier has the right to make such transfers under the provisions of Rule 19 of the agreement.

Referring to part 1 (a) of Employees' claim, it is not a fact that on May 17, 1954, the Carrier abolished the seniority district identified in Rule 4 as "Auditor of Disbursements—12th Street." After the transfers described above, forty-three positions remained in the seniority district of the Auditor of Disbursements. The occupants of these positions were merely moved physically with their work to Carrier's office building at 6327 Dorchester Avenue. Referring to part 1 (b) of Employees' claim, no seniority district was abolished on May 17, 1954, and the transfers made on that date were permissible under the agreement. Referring to part 1 (c) of Employees' claim, the seniority district identified as "District Accountant—63rd Street" was not abolished on May 17, 1954, nor was it affected in any manner. All Employees in that seniority district continued on their same positions, doing the same work, and on the same roster until November 26, 1954. Concerning part 2 of Employees' claim, the Board has no authority to restore seniority districts as constituted before May 17, 1954, (Rule 4) because those seniority districts have been changed in accordance with Rules 20 and 64 and the Railway Labor Act. As for part 3 of Employees' claim, no employees involved in or affected by the transfers of May 17, 1954, and by the changes made effective under the existing agreement and the Railway Labor Act on November 26, 1954, have sustained any losses.

It will be noted from Carrier's Exhibit 8 that there have been changes in the degree of coverage on certain positions in Rules 1 (B) and 1 (C) of the Clerks' Agreement. The System Committee of the Brotherhood have taken no exception to those changes and no claim is filed on that account which indicates their acquiescence.

Further, it is the position of the Carrier that all the violations alleged by the Employees have become purely academic because all the changes complained of became effective in compliance with the Railway Labor Act, as amended, and the existing rules agreement on or before November 26, 1954, leaving no question for the Board to decide.

There has been no violation of the agreement, and claims should be dismissed.

All data in this submission have been submitted to the Employees and made a part of the question in dispute.

OPINION OF BOARD: The record in this case is voluminous and there are a number of facts which are either in dispute or unclear. The facts as stated in this Opinion represent our findings based upon consideration of the whole record.

At the time this dispute arose, there were, among others, the following separate seniority districts under the Agreement: Auditor of Disbursements—12th Street, Auditor of Freight Receipts—63rd Street, Auditor of Passenger and Station Accounts—63rd Street, Special Auditor—63rd Street and District Accountant—63rd Street. With the exception of the Auditor of Disbursements all of these districts were located in the Carrier's general office building at 63rd Street and Dorchester Avenue in Chicago. The Auditor of Disbursements was located in the Carrier's other general office building in Chicago, at 12th Street and Michigan Avenue, some 51 city blocks north of the 63rd Street building. Early in 1954, the Carrier, for reasons of operational efficiency, decided that certain employees, along with their positions, should be transferred from Auditor of Disbursements—12th Street to various of the other seniority districts at 63rd Street listed above; and that the Audi-

tor of Disbursements—12th Street seniority district with its remaining employees should be consolidated with the District Accountant—63rd Street seniority district to form a new seniority district to be known as Office of Auditor of Disbursements—63rd Street, and to be physically located at the 63rd Street general office building.

Apparently, there was some discussion of the proposed changes earlier, but the first concrete description of what the Carrier intended to do was contained in a letter dated April 27, 1954 from the General Auditor of the Carrier to the Organization's Division Chairman. This letter was followed by meetings on April 28 and 29 at which no agreement was reached, and another letter dated April 30 in which the General Auditor indicated that he was agreeable to further discussion of the matter, but that physical changes necessary for the move would proceed and the move itself would be made on or about May 14. The Division Chairman replied by letter dated May 3, to the effect that under Agreement rules, no part of the proposed change could be carried out without agreement between the parties.

The next discussion of the proposed changes took place between the Manager of Personnel and the General Chairman, on May 13, at which time the Carrier presented a proposed agreement covering all aspects of the changes, including some changes in rates of pay and Agreement coverage. The General Chairman requested that the move be delayed for 30 days, so that an agreement could be worked out between the parties. Carrier refused and stated that the move would be made on May 17. At this point, the Organization invoked the services of the National Mediation Board in an attempt to forestall Carrier action on the seventeenth, claiming the Carrier's proposal was a proposal to change the Agreement.

On May 17, Carrier moved all the employees in the Auditor of Disbursements—12th Street seniority district to 63rd Street. The transfers of employees with their positions to the various other seniority districts were carried out as planned, but the consolidation of the remaining employees with the District Accountant seniority district was not effected. Instead, the Auditor of Disbursements district was maintained and continued as before with the exception of the change in its physical location.

On May 28, the instant claim was filed. Conferences, with and without mediator, were held on and off between the parties. On October 7, the Organization withdrew the case from the Mediation Board. A further conference was held between the parties on November 16 at which no agreement was reached and negotiation was broken off. Ten days later, on November 26, Carrier carried out the remainder of its proposed changes including the consolidation of the two seniority districts.

The claim is that Carrier violated the Agreement by abolishing the Auditor of Disbursements—12th Street district on May 17 without agreement; by transferring positions, work and employees from the abolished district to other districts; and by establishing a new consolidated seniority district after the abolition of Auditor of Disbursements—12th Street and District Accountant—63rd Street. Further, that all seniority districts be restored as constituted before the May 17 changes, and that all involved employees be reimbursed for all losses sustained.

Numerous rules are cited in the record, but the case hinges upon the interpretation of Rules 4 and 19. Rule 4 is entitled "Seniority Rights" and its pertinent provisions are as follows:

"(a) Seniority rights of employees will be confined to the following seniority districts:

Each of the following offices will constitute a separate seniority district:"

(There follows a listing of the seniority districts)

* * * * *

"(c) The seniority districts and rosters enumerated in Rule 4 may be subdivided or consolidated by mutual agreement between the Manager of Personnel and the General Chairman, in which event records of employees affected will be transferred without change." Rule 19 is entitled "Transferring" and reads:

"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."

Carrier's proposal of May 13 involved two basic changes: (1) The transfer of certain employees with their positions and work from Auditor of Disbursements—12th Street to other existing seniority districts at 63rd Street; (2) the consolidation of Auditor of Disbursements—12th Street and District Accountant—63rd Street into a new seniority district to be located at 63rd Street. The Organization took the position that agreement was required under Rule 4 before Carrier could put the plan or any part of it into effect. When Carrier refused the request for a thirty day postponement and indicated that it would proceed as planned on May 17, the Organization apparently assumed that the consolidation as well as the physical move and transfer features would be effected on that date. Carrier, however, did not put the entire plan into effect. The transfers were made as planned, but the consolidation was not. Instead, the remaining employees, positions and work of the Auditor of Disbursements—12th Street, were moved physically to 63rd Street and continued as a separate seniority district. After the changes were made on May 17, the Organization continued to claim that the 12th Street district had been abolished and that the proposed consolidation had taken place.

It is Carrier's position that the Agreement does not restrict its right to change the physical location where work is to be performed, which is all that was done with respect to the Auditor of Disbursements—12th Street district on May 17th; and that it has the right to transfer employees with their positions from one seniority district to another under Rule 19.

The Organization's claim states that the 12th Street seniority district was "abolished" on May 17th; however, in the course of its submissions, it takes the position that even if it was only physically moved to 63rd Street and there continued, this was a violation of Rule 4. As to the transfers, the Organization contends that Rule 19 is merely a formula rule which sets out the rights of employees after there has been an agreement to transfer them under Rule 4 (d); such an agreement must first be reached before Rule 19 can come into play. Since there was no agreement reached, the transfers were in violation of Rule 4 (d).

The removal of the Auditor of Disbursements seniority district intact from one office building to another 51 blocks away was not a violation of the Agreement. The seniority rules herein establish the rights of employees to positions and work within their seniority district as against each other and as against employees in other seniority districts. They do not necessarily guarantee permanence in the physical location of the place of work. The division into seniority districts in this case is based upon administrative, rather than geographic boundaries. Here from May 17 until November 26, all of the rights of the employees in connection with seniority remained as before. If the change in location resulted in additional travel time or other similar inconveniences, this undoubtedly could have been a separate subject for negotiation between the parties; but the move itself was not barred by the seniority rules of the Agreement.

The question of the transfers is a more difficult one. The Board has stated many times, as in Award 2050 between these same parties, that positions or work may not arbitrarily be removed from the confines of one seniority district and placed in another. However, in that case and in most of the others cited in support of this principle, the facts involved the removal of work to another district and the performance of the work by employees holding seniority in the district to which the work was removed, with the resulting loss of the work to the employees in the seniority district from which it was removed. Thus, neither in Award 2050 nor Awards 199 and 5091, also involving the same parties and same Agreement, was Rule 19 or the transfer of employees with their positions involved. Award 198, between the same parties, did involve Rule 19. The claim there was by employees whose work had been transferred out of their seniority district to another district, that they should have the right to transfer with this work under Rule 19. The claim was sustained. Despite a dictum in Award 198 to the effect that a position moved from one seniority district to another continues in the first district until the parties, under Rule 4, make some agreement as to the district in which the position will be carried permanently, we do not feel that any of the prior awards between these parties is controlling in this case, since none of them involved a factual situation similar to the one here.

Of all the awards cited in connection with this case, three involve rules and factual situations which seem closely related to the ones before us. In each of Awards 6309, 6655 and 6938, there was a provision in the rule covering seniority districts that no change could be made in the seniority districts except by agreement between the parties. Also in each case, there was a rule which provided that when a position was transferred from one seniority district to another, the incumbent of the position had the right to follow the position to the new district. In Awards 6309 and 6938, it was held that a transfer of a position from one seniority district to another was a "change" in the seniority district, and that the rules permitting an employee to follow his position to the new district were permissive and subject to the requirement of agreement in the seniority district rules. In Award 6655, it was held that a transfer of positions did not amount to a "change" in seniority districts, and that in any case the rule permitting the employee to follow his transferred position spelled out an agreement in advance as to such an employee so that no special conference or agreement was necessary prior to the transfer.

In the case before us, the rule does not provide that no "change" in seniority districts may be made without agreement. The provision is that seniority districts may be "subdivided or consolidated" by mutual agreement. Thus, the proscription against changing seniority districts is narrower than in any of the three cases cited above. The question is not whether the transfers of positions amounted to a "change" in seniority districts; it is whether the transfers amounted to a "subdivision" or "consolidation". Rule 19 deals with transfers of positions from one seniority district to another and spells out the rights of employees whose positions are transferred. Rule 4 (d) is concerned with subdivision and consolidation of seniority districts and makes no attempt to spell out rights but leaves it to a mutual agreement to be arrived at in each case. The difference between "transfers of positions" and "subdivision and consolidation of seniority districts" is clear and unambiguous, and the parties' limitation of Rule 4 (c) to subdivisions and consolidations, and use of a separate rule to deal with transfers is significant. We think that Rule 19 represents an agreement between the parties that Carrier may effect transfers of positions from one seniority district to another and an agreement in advance as to the rights of employees whose positions are transferred; and that such transfers are not subject to the mutual agreement required in the case of subdivisions and consolidations.

The Organization alleges in its submission that certain positions were not transferred intact but were changed as a result of the transfer. The changes alleged are that clerical work was removed from these positions and transferred to other positions; and that rates of pay were changed. Rule

19 as we construe it permits the transfer of positions without change. It appears from the record that wage rates of some of the transferred positions were changed; to the extent that the Organization wishes the rates restored to their original status, we hold that Carrier is obliged to restore them. We cannot ascertain from the record whether the other alleged changes occurred or not, but it should be within the abilities of the parties to do so. To the extent that such changes did occur, they were in violation of the Agreement and the Carrier is obliged to restore the positions involved to their pre-transfer condition.

The remaining question to be dealt with is the propriety of Carrier's unilateral action of November 26 in effecting the consolidation of the Auditor of Disbursements—12th Street and the District Accountant—63rd Street seniority districts. It is Carrier's contention that this matter was handled as a proposed change in the rules of the Agreement under Section 6 of the Railway Labor Act, and that when ten days elapsed after termination of conferences on November 16 without request for or proffer of services of the National Mediation Board, Carrier was free to put the proposed rules change into effect. In view of the Organization's reference of the matter to the National Mediation Board and that agency's docketing and processing it as a dispute, there is some technical basis for the Carrier's position. But we feel that to adopt this argument would be to ignore the basic nature of the difference between the parties and to deal only with the secondary complications. It is perfectly clear that Carrier's original proposal was not a proposal to change the rules of the Agreement under Section 6, but a proposal to make certain changes permitted by the Agreement and to negotiate an agreement to make other changes in accordance with Rule 4 (d) of the Agreement. In an effort to delay the proposed action, the Organization seized on the idea of treating the proposal as a rules change. Carrier denied this at the time. In the course of the dispute, for strategic reasons, each side reversed its position and now Carrier contends the dispute was under Section 6 and the Organization contends that it never was.

These shifting positions cannot obscure the fact that the original proposal for consolidation was made under Rule 4 (d) and not under Section 6. We feel that it was a violation of Rule 4 (d) to consolidate the two seniority districts without the mutual agreement required by that rule. The proposal for consolidation was never discussed between the parties in an atmosphere free from the complicating factor of the dispute over the Carrier's right to move employes from 12th to 63rd Street and to transfer them from one seniority district to another. It may well be that with the rights of the parties in those areas now defined, their negotiations as to consolidation will be more fruitful. Therefore, the parties should proceed to negotiate in an attempt to reach agreement on the terms and conditions of consolidating the two seniority districts. If no agreement is reached within sixty days from the date of this award, the Carrier shall restore the Auditor of Disbursements—12th Street seniority district to the status it occupied subsequent to May 17 and prior to November 26, 1954; i. e., a separate seniority district composed of the employes, positions and work remaining after the transfers of May 17, but physically located at the 63rd Street office building.

The claim asks that employes be reimbursed for losses sustained. It does not appear from the record that there were any losses; however, if in fact there were losses caused by changes in the transferred positions on May 17, or by the consolidation on November 26, the claim is sustained to the extent of such losses.

In summary, we find that the Carrier violated the Agreement by consolidating the Auditor of Disbursements—12th Street and District Accountant—63rd Street seniority districts on November 26, 1954 without the mutual agreement required by Rule 4 (d). We find further that to the extent the positions transferred from Auditor of Disbursements—12th Street to other seniority districts on May 17, 1954 were changed from their original condition, the Carrier was in violation of the Agreement. To the extent of these two

violations, the claim is sustained in accordance with the above Opinion. In all other respects, the claim is denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 1st day of October, 1956.