Award No. 11919
Docket No. CL-11722

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated and continues to violate provisions of the current agreement, as hereinafter stipulated, when effective July 1 and July 16, 1959, the Carrier unilaterally transferred work and positions from seniority districts of the Timekeeping-Accounting Bureau (office of Chief Operating Officer), the office of Engineer Maintenance of Way, the office of Manager Purchases and Stores and the office of Chief Mechanical Officer into the seniority district of the Office of Auditor of Disbursements, and

(2) That the work and positions shall now be restored to the seniority districts from which transferred and that any employe involved or affected by the transfer be compensated for any loss of earnings, the amount to be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: On May 25, 1959, as reflected by Employes' Exhibit "A", the Carrier gave notice of plans to create effective July 1, 1959, in the office of Auditor of Disbursements, a Payroll and Material Accounting Bureau to which all positions and work in that category would be transferred from the Timekeeping-Accounting Bureau (office of Chief Operating Officer), office of Engineer Maintenance of Way, office of Manager Purchases and Stores and office of Chief Mechanical Officer. Assuming that this transfer would be accomplished under the provisions of Memorandum of Agreement of February 4, 1959 (automation agreement), copy of which is attached as Employes' Exhibit "DD", the General Chairman wrote the Chief Finance and Accounting Officer on May 28, 1959 for confirmation of this understanding, Employes' Exhibit "B". Under date of May 29, 1959 the Chief Finance and Accounting Officer advised that the transfer was not being accomplished under the provisions of the Memorandum Agreement of February 4, 1959, Employes' Exhibit "C".

When it was determined through further correspondence exchanged, as reflected by Employes' Exhibits "D" and "E" that it was the intention of the

or electrically operated data processing machines and, consequently, it would be impossible for him to follow his position or work as contemplated by Rule 23 of the Clerks' schedule agreement under such circumstances. It was for just that reason that it became necessary for the parties to negotiate the Memorandum of Agreement of March 1, 1959. It must be emphasized, however, that that Agreement has no effect whatsoever on positions and work transferred from one seniority district to another under Rule 23 of the schedule agreement, as was done in the instant dispute preliminary to exploring the possibilities of processing certain of the work through the use of machines in the Machine Accounting Bureau, except that, regardless of any other considerations, the Employes' claim for restoration of work and positions to the seniority districts from which transferred and claim for loss of earnings, if any (and to this time no employe has suffered any loss of earnings as a result of the disputed transfer of positions to the Office of Auditor of Disbursements), must be considered as terminated as of the date that the work of each such position is transferred to the Machine Accounting Bureau under the March 1, 1959 Memorandum of Agreement, which transfer has been or is now in process, notices thereof under Section 5(a) of the March 1, 1959 Agreement having been given General Chairman Howard in the Chief Finance and Accounting Officer's letters of November 3, 1959 and January 13, 1960, copies of which are attached as Carrier's Exhibits "D" and "E", respectively.

For the reasons stated the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: In place of each Department handling payroll data, material accounting, and related work, Carrier established the Payroll and Material Accounting Bureau in the Office of Auditor of Disbursements effective July 1, 1959. It arranged for the transfer to this Bureau of the work and positions from other seniority districts, Timekeeping-Accounting Bureau (office of Chief Operating Officer), the office of Engineer Maintenance of Way, the office of Manager Purchases and Stores, and the office of Chief Mechanical Officer. Employes involved were given the opportunity to follow their jobs and notice of transfers were communicated to Organization.

Organization contends that Carrier acted unilaterally without conference and negotiation in violation of Rule 70 when it made the transfer of work and positions from other seniority districts to the seniority district of the Office of Auditor of Disbursements. It further argues that since Rule 5 establishes the seniority districts, these cannot be changed without negotiation and agreement. It also maintains that transfers made at different intervals would ultimately result in the destruction of seniority districts. Such action is contrary to the intent of the agreement, for it would permit Carrier unilaterally to change the status of employes and affect their seniority rights.

Carrier first asserts that the claim is invalid and should be dismissed because of failure to name Claimants as required under Section 1(a) of the

National Agreement of August 21, 1954. In addition to this technical defense, it argues on the merits of the case that Rule 23 governs the conditions which determine when positions or work are transferred from one seniority district to another and that negotiations and agreement are not required under this Rule.

We find from the record that the Claimants are sufficiently identifiable to satisfy the requirements of Article V, Section 1(a) of the National Agreement of August 21, 1954 and therefore, we reject Carrier's contention that the claim should be dismissed.

The basic issue in this dispute is whether or not Carrier has the right to make transfers from one seniority district to another without negotiation or conference.

The Rules of the Agreement and specifically, Rule 70, upon which Petitioner relies fail to sustain the contention that Carrier can make transfer of positions and employes only through bilateral agreement. Rule 70 provides for conferences in the event that either party ". . . desires to revise or modify these rules . . .". The case at bar does not involve a question of changing the Rule; it concerns the interpretation and application of specific provisions of the Agreement.

Rule 23(a), however, deals with the question of transfers from one seniority district to another; therefore, it is pertinent to this dispute. It reads as follows:

> "Employes may follow their positions or work when same is transferred from one seniority district to another. The incumbents will have prior rights to the positions to be transferred, if they elect to accompany same. Those electing not to follow their positions and work may exercise their seniority rights as per Rule 19 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."

We find no explicit provision in the above Rule requiring conference or negotiation before making transfers from one seniority district to another. Furthermore, we cannot interpret from the Agreement that it is necessary to employ negotiation before applying Rule 23(a). The facts in Award No. 2354 cited by Organization to support its claim are unlike those in the case under consideration. That dispute concerned the abolishment of the position and the transfer only of the work to another seniority district. In the instant case, there was no elimination of positions; both work and employe were transferred. We find Award No. 6655 more in point because a similar factual situation with a rule comparable to Rule 23 was involved. That Award held that unilateral action was proper under the Rule.

We also find no evidence to sustain Petitioner's contention that it is Carrier's intention ultimately to destroy the employes' seniority rights by gradually removing some positions from one seniority district to another. Carrier's transfers were designed to secure more efficiency. In executing these, it did not abolish work or positions, and it gave due consideration to the employes affected by the transfer.

We hold that the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.