Award No. 12285
Docket No. CL-11966

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement effective May 1, 1942, except as amended, particularly Rules 3-E-1 (b) and 4-A-6, when as a result of the revamping of existing L.C.L. loading instructions, 37% of the total tonnage handled at Polk Street Freight Station, Chicago, Illinois, Northwestern Region, was transferred to the Fort Wayne, Indiana Freight Station, Northwestern Region, and consolidated with the loading and unloading of L.C.L. freight at Fort Wayne, resulting in the transfer of one Route Clerk position, six Tallyman positions, two Stevedore positions, and twelve Loader-Trucker positions from Chicago to Fort Wayne, effective January 6, 1958, without an agreement, with the General Chairman.

(b) The Claimants, Route Clerk G. Fanta; Tallymen M. Monaghan, J. Barlow, T. R. Dixon, W. Looney, G. Hoard, and G. P. Howard; Stevedores E. Crosby and M. Lockett; and Trucker-Loaders R. Lampley, O. Yearly, R. A. Clark, E. T. Washington, Wm. Jackson, R. A. Ford, A. O. Tubbs, and B. King, and all other employes adversely affected, be allowed eight hours' pay a day, as a penalty, be compensated for all time worked outside their former assignments, and for all other monetary loss sustained, including expenses, commencing January 6, 1958, and continuing on all subsequent dates until the violation is corrected. [Docket 554]

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held positions and the Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with

Board as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

III. Under The Railway Labor Act, The National Railroad Adjustment Board Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that Rule 3-E-1 has no application to this dispute and that the transfer of work here involved was in no way violative of the applicable Rules Agreement.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employes' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 6, 1958, 10,304 tons of freight per month, requiring sixty platform employes, was handled at Polk Street Freight Station, Chicago, Illinois. After the above date 3,847 tons per month was transferred from Polk Street to the freight station at Fort Wayne, Ind., the latter location being in the same seniority district as Polk Street Freight Station. On December 19, 1957, a meeting was held between the Superintendent of Stations and the Assistant General Chairman, where it was verbally agreed that twenty-one positions were involved, and the selection of the positions would be made by transferring the number of each type of position required held by junior incumbents at Polk Street. At the meeting the Assistant General Chairman proposed an agreement be made covering the

transfer of work under the provisions of Rule 3-E-1 (b) and that the employes be allowed moving expenses and living expenses at Fort Wayne, until they found a place to live. The proposal was declined by the Superintendent.

The question to be decided in this claim is did the transfer herein violate the Rules Agreement, especially Rule 3-E-1 (b) when it unilaterally transferred work from the Polk Street Freight Station, Chicago, Illinois, to the Freight Station at Fort Wayne, Indiana?

It was the contention of the Claimants that according to Rule 3-E-1 (b), when new offices or departments are organized to take over work now being performed in other offices or departments, or when consolidations, or other combinations or divisions of offices or departments are made, the re-arranging, and awarding of positions shall be by agreement between the Carrier and the General Chairman. Therefore, the transfer of freight from Polk Street, Chicago, to Fort Wayne, Indiana, constituted the organization of a new office or department at Fort Wayne, and it was the position of the Claimants that the re-arranging and the awarding of positions should have been by Agreement between the Carrier and the General Chairman, as provided in Rule 3-E-1 (b). Furthermore, there is nothing contained in the language of Rule 3-E-1 (b) which would limit its application solely to instances involving the transfer of positions from one seniority district to another, as alleged by the Carrier, and unless such a restriction is included, it cannot be implied.

The Carrier contended that Rule 3-E-1 (a) and (b) apply only to positions and employes transferred from one seniority district to another seniority district, which is not involved here, as both Chicago and Fort Wayne are within the same seniority district. Rule 3-C-1 provides for the changing of the location of assignments from within the limits of one city or town to within the limits of another city or town, within the same seniority district. This rule does not provide for agreement or negotiation when such changes in location of positions are made within a seniority district.

The Rules in disputes, 3-E-1 (a), 3-E-1 (b), 3-E-1 (c), 3-E-1 (d), read as follows as they pertain to the issue:

"Rule 3-E-1

(a) Employes whose positions are transferred to another seniority district will, if they choose to follow such positions, carry their seniority with them and will retain and continue to accumulate seniority in their home seniority district. Employes not electing to follow their positions may exercise seniority in their home seniority district under Rule 3-C-1.

* * * * *

(b) When new offices or departments are organized to take over work now being performed in other offices or departments or when consolidations, or other combinations or divisions of offices or departments are made, the re-arranging and the awarding of positions shall be by agreement between the Management and the General Chairman, provided however, that in the case of work or positions not subject to the provisions of Rules 2-A-1 and 3-C-1, such work or positions shall be re-arranged and assigned solely by the Management, at its discretion.

(c) When employes do not elect to follow their positions under paragraphs (a) and (b) of this rule (3-E-1), but exercise seniority in their home seniority district under Rule 3-C-1, the vacancies thus created will, if subject to the application of the provisions of Rules 2-A-1 and 3-C-1, be advertised in the seniority district from which the positions are transferred. . . .

* * * * *

(d) Employes covered by this rule (3-E-1) may exercise their seniority in either district, when entitled to do so under this Agreement, but when they leave the district to which transferred for any reason, they will forfeit seniority in that district."

The question to be resolved: Does Rule 3-E-1, and specifically, Section (b) of that rule, apply to transfer of employes, and movement of offices from one seniority district to another seniority district, or does it apply to transfer within a seniority district?

We are of the opinion, which has been admitted by all parties, that Section (a) applies to transfers between two or more seniority districts. The section is specific in its language. Section (c) says "When employes do not elect to follow their positions under paragraphs (a) and (b) of this rule (3-E-1), but exercise seniority in their home seniority district under Rule 3-C-1, . . ." Does Section (c) then imply in this language that Section (b) applies to transfers between districts or rather to within a district? Section (d) states "Employes covered by this rule (3-E-1) may exercise their seniority in either district, when entitled to do so under this Agreement, . . ." Does the application of this rule apply to transfer of employes from one seniority district to another?

To return to Section (b) of the rule, it refers to a transfer of offices or departments, rather than employes, as in Sections (a), (c) and (d). The Claimants have contended that if Section (b) was to have been applied only to transfers between seniority districts, it would have stated so in expressed language. Hence the rule is applicable to transfer both between seniority districts and within seniority districts.

In an attempt to rationalize Section (b) of this Rule, we are bound to construe the various sections of Rule 3-E-1, that is, Sections (a), (c) and (d) together, in order to arrive at a reasonable application of what the parties intended in Section (b). See Award 6856 of this division. Thus, we will, if possible, give effect to all parts of the rule, and an interpretation which gives a reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless or inexplicable, and if this is impossible, an interpretation which gives effect to the main apparent purpose of the agreement will be favored. These rules are general rules of contract interpretation and will be applied herein.

When we examine Sections (a), (c), and (d), they all apply to transfers from one seniority district to another. Section (c) also states by reference to Section (a) and (b) as: "When employes do not elect to follow their positions under paragraph (a) and (b) of this rule (3-E-1) but exercise seniority in their home seniority district. . . ." Section (a) applies to transfers between seniority districts. It thus appears that the words, "do not elect to follow their positions under paragraphs (a) and (b) . . ." means they do not elect to follow their positions to other seniority districts in (b) as in (a), where it is

conceded refers to other seniority districts. Where would they follow their positions to? If they don't follow them, as provided for in (a) and (b), to other seniority districts, they exercise their seniority in their home districts under Rule 3-C-1.

We are also of the opinion that Section (d) refers back to Sections (a) and (b). The words "may exercise their seniority in either district. . . ." refers to the moving from one seniority district to another, as provided for in (a) or (b), or exercising seniority in their home district, as provided for in 3-C-1. However, if they leave a district to which transferred, they forfeit their seniority, thus providing for inter-district transfers.

It might also be added that Rule 3-E-1 covers transfer of employes as the margin title indicates, "transfer of employes." Paragraph (a) specifically covers employes whose positions are transferred to another seniority district. The sentence "Employes not electing to follow their positions . . ." means follow their positions to another seniority district. Paragraph (c), next following, uses the language "When employes do not elect to follow their positions . . ." Follow where? To another seniority district? The language says when they do not elect to follow their positions under paragraph (a) and (b) of this Rule (3-E-1) but exercise seniority in their home district. In this latter instance they are not following their position.

Thus, in light of the entire Rule 3-E-1, there is no interpretation, other than that the entire rule applies to the transfer of employes, offices or departments between seniority districts. In the instant dispute, the transfer was within a seniority district.

In reply to the Claimants' contention that Section (b) does not expressly limit its provisions to transfer between seniority districts, it is also silent on the subject of transfer within seniority districts. Thus, this ambiguity requires us to examine the entire implication of Rule 3-E-1 (a), (b), (c), and (d).

We are not unmindful of the problems of the Claimants, but there appears to be no rule in the agreement requiring the Carrier to agree, under the circumstance herein, to the payment of moving expenses or living expenses until the employes are located in another seniority district or any other requirements, meritorious as such an agreement might be. Thus, the Carrier's actions under Rule 3-C-1 were provided for by the agreement.

The transfers involved in this claim were all within one seniority district, and further that Rule 3-E-1 (b) applies to transfers between seniority districts. This opinion is in support of Special Board of Adjustment 374 between the parties herein.

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 Rule 3-E-1 (b) covers employes who are transferred from one seniority district to another.

The transfers involved in this claim were all within one seniority district.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.