Award No. 12313
Docket No. CL-11999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated the Clerks' Agreement at Princeton, Kentucky, when on November 29, 1958 and subsequent dates it unilaterally transferred the work of calling engine crews from a position occupied by an employe holding seniority on the Mechanical Department Clerical Roster to positions occupied by employes holding seniority on the Transportation Clerical Seniority Roster.

(b) C. G. Glenn be compensated eight hours per day, five days per week, Monday through Friday, December 1, 1958 to February 22, 1960, inclusive.

(c) J. G. Mann be compensated four hours per day for Saturday, November 29, 1958 and each Saturday and Sunday thereafter to and including February 21, 1960.

EMPLOYES' STATEMENT OF FACTS: From June, 1932 until November 29, 1958, all engine crews called on the day shift at Princeton were called by the Clerk to the General Foreman, the occupant of which holds seniority on the Mechanical Department Clerical seniority roster.

At no time during the twenty-six-year period, June, 1932 to November 29, 1958, was the calling of engine crews on the day shift performed by any employe other than the clerk to the General Foreman.

January 28, 1959, claim was filed with Master Mechanic R. E. Whitaker. See Employes' Exhibits Nos. 1-A, 1-B and 1-C.

March 11, 1959, claim was appealed to General Superintendent Motive Power J. A. Welsch. See Employes' Exhibits Nos. 2-A and 2-B.

April 9, 1959, claim was appealed to Manager of Personnel R. E. Lorentz. See Employes' Exhibits Nos. 3-A, 3-B, 3-C, 3-D, and 3-E.

OPINION OF BOARD: Prior to 1932, the calling of engine crews was performed by employes holding seniority on the Transportation Department Clerical roster. From 1932 until 1958 crew-calling on the day shift was performed by an employe on the Mechanical Department Clerical roster. On the other shifts it was performed, until 1954, by hostlers and a foreman who were employes outside the scope of the Clerks' Agreement.

In 1954, upon a protest by the Clerks, the duties of calling crews on other than the day shift were, by agreement with the Carrier, transferred to Yard Clerks who held seniority under the Transportation Department Clerical roster.

In 1958, without consulting the Organization, the Carrier transferred the duties of crew-calling on the day shift from the employes on the Mechanical Department Clerical roster to employes on the Transportation Department Clerical roster. The Petitioner did not assert that the Claimants were furloughed, or lost any working time as a consequence of the loss of these duties, nor was there any evidence that any new employe was engaged in the Transportation Department to handle the added duties. The Carrier estimated that the amount of time consumed in the performance of these duties was at the most thirty minutes. The Claimants continued to work the same number of hours and days as before. Only the number of their duties was diminished.

The Petitioners contend that this unilateral transfer of duties, long performed on the day shift, violated the seniority rights of the Claimants. It argued that the Agreement gave the Carrier no such right to transfer work and it cited many decisions of this Board to support this theory.

An examination of the Boards' decisions shows that where the Employes have had the exclusive right to perform the duties as set forth explicitly in the Scope Rule or by interpretation of it, the Board has, indeed, held any such transfer a violation of the agreement. Such decisions were based on the contract right to do that work. For such precedents to apply, it would be necessary for the Petitioner to show a contractual right to exclusivity.

The Petitioner, however, does not claim a violation of the Scope Rule in asserting its rights. It claims a violation of seniority rights.

Seniority does not establish rights of exclusivity to the work. It provides the order in which men may be assigned to do work. It protects the senior man against a junior or outsider displacing him. It is not so much a right to the work as a protection against other employes.

In the cases cited by the Petitioner which involve transfer of work from one seniority district to another, the transfer was condemned because they all involved the abolition or diminution of a position in one seniority district and the creation of the same position elsewhere. In essence seniority affords protection against the transfer of a position, i.e., the right to hold the job, but not necessarily to the duties of the job.

The theory upon which the Organization depends would make it impossible seniority rosters, which was then being performed on different tricks by employe to another and would freeze job content. It is extremely doubtful that such was the Parties' intention in writing a seniority clause.

We are here concerned with the transfer of an insignificant amount of work, which had in the past been transferred back and forth between the two

seniority rosters, which was then being performed on different tracks by employes on different seniority rosters, and which involved no loss or gain of hours of work by the employes affected. In our opinion, this was within the Carrier's prerogative to assign work.

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 Carrier did not violate the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1964.

LABOR MEMBER'S DISSENT TO AWARD 12313 DOCKET CL-11999

Award 12313 is erroneous in many respects, among which are:

(1) Petitioner **did assert** and show that working time was lost as the result of transferring the duties to employes of another district.

(2) Claimants **did not** continue to work the same number of hours and days as before. The relief position was abolished.

(3) Neither the Scope nor any exclusive test was involved. No Scope Rule violation was charged before this Board. A prior claim based on the Scope Rule was settled on a compromise basis in 1954 by **agreeing to transfer** similar work as here involved on the **second and third trick only** to employes in another seniority district. Moreover, that settlement promised that: "The calling of crews on first trick will remain as at present."

(4) Cases cited **did not all** involve abolition or diminution of a position in one seniority district and the creation of the same position elsewhere.

(5) Organization **was not** arguing that Carrier could not, under certain circumstances, shift duties from one employe to another.

(6) Organization was arguing, and with sound basis, that Carrier could not unilaterally transfer work from one seniority district to another.

(7) The only issue involved in this case, i.e., whether or not Carrier could unilaterally transfer work from one seniority district to another, was clearly answered in an Award between these same parties over the same rules by Referee Edward M. Sharpe in Award No. 11 of Illinois Central Special Board of Adjustment No. 170 where it was held that:

> "A reading of the Agreement clearly shows that there is no unilateral right or authority to remove work from one seniority district to another such district."

According to principles of this Board, unless a prior Award is palpably erroneous it should be followed. See Award 11788, Referee John H. Dorsey. The wisdom of such a principle is obvious.

However, more important matters are involved here than merely an erroneous decision in this one single case. Award 12313 represents the introduction of a theory with respect to seniority districts and rights which is entirely foreign to the Railroad Industry. Injection of such a theory into an already unstable industry torn with strife and dangerously flirting with nationalization just does not at all meet or serve the purposes for which this Board was established. Because I feared potential chaos would result if the Referee's theory is seized upon by Carriers in an attempt to wipe out long established principles adhered to and honored since the birth of collective bargaining Agreements in the Railroad Industry I requested, and was granted, a rehearing. I made it clear then, as I do here, that I accepted the fact that this individual case was forever lost and argued only against the theory which was used as the vehicle to deny the Employe's claim. The Referee clearly understood my position and was evidently somewhat persuaded by it for, after the re-argument, he deliberately revised his Award by deleting the previous last two paragraphs reading:

> "In the case at bar, work has been shifted, but the position has not been changed. The title, the hours and the pay remain the same.
>
> The Claimants have not been displaced by employes on another seniority list. For these reasons it cannot be said that their seniority rights have been violated."

and rewriting the last paragraph in an attempt to limit his decision so that the Award would be understood to have been based solely on the particular facts, as he understood and believed them, of the case under consideration. Obviously he could have more clearly stated the limitation but, notwithstanding that matter, the revised Award was clearly intended to so limit the Award. Therefore, the Award cannot serve as precedent for it was based solely on the peculiar facts involved as the Referee understood and/or wanted to believe them.

There are many dangers inherent in introducing such revolutionary concepts at a time when Agreements have been formulated and negotiated for decades based upon a clear understanding by both sides of early pronounce-

ments of this Board and other tribunals specifically concerned with the Employe-Employer relations in the Railway Industry. The theory here injected could well upset one of the few matters which was settled between the parties and if upheld, or even seized upon, could very well negate countless agreements arrived at in good faith based on the historical concept understood by both sides.

The Award is but another example of the danger involved in assigning Referees to this Board who, although quite capable and knowledgeable in "outside industry" matters, have no experience whatsoever with the collective bargaining Agreements in the Railroad Industry. I hope the learning process will not prove too costly to the industry.

For all the above and other reasons, I dissent.

D. E. Watkins

April 2, 1964