Award No. 13830
Docket No. CL-14464

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

John H. Dorsey, 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 (GL-5447) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-E-1, when it refused to grant prior seniority rights to Claimants E. E. Nelson, S. H. Reigh and P. R. Helsel, when these employes transferred with work and positions from Pitcairn, Pennsylvania, Pittsburgh Region Seniority District, to the Juniata Locomotive Shops, Altoona, Pennsylvania, Altoona Works Seniority District (Docket 1324)

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 Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Following a fire which destroyed the Air Brake Shop at Pitcairn, Pa., Pittsburgh Region, on October 4, 1961, certain positions were transferred from the Pitcairn Air Brake Shop to the Locomotive Shops at Altoona, Pa., which is located in the Altoona Works Seniority District. The Carrier had decided not to rebuild and continue the operation at Pitcairn, Pa.

Three of the positions so transferred are the positions involved in the present dispute. As the incumbents of the positions at Pitcairn did not desire to transfer with their positions, the three positions were advertised and awarded to other employes in the Pittsburgh Region Seniority District as follows:

Therefore, your Honorable Board is, respectfully requested to dismiss or deny the Employes' Claim in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were transferred, together with their positions, from a Pittsburgh Region Seniority District to the Juniata Locomotive Shops in the Altoona Works Seniority District. The issue is whether the contractual seniority rights of each of them were honored and properly prescribed on the posted seniority roster for the Altoona Works.

Because of past consolidations of seniority districts within the Altoona Works prior seniority rights were vested in employes holding positions at the time of the consolidations. Claimants were not vested with prior rights in the Pittsburgh Region. This gave rise to the question of the seniority entitlements of Claimants in the Altoona Works District. Duly authorized representatives of Carrier and the Organization, in the spirit of the collective bargaining process as contemplated by the Railway Labor Act and the Agreement, conferred to resolve the question; and admittedly,

> "It was agreed, by and between the Superintendent-Personnel and the Division Chairman, that the names of the individuals (the Claimants) . . . would be inserted on Altoona Works rosters with the Pittsburgh Region seniority dates **but with no prior rights at Altoona Works." {Emphasis ours.}**

In compliance with the foregoing agreement, the seniority dates of Claimants were "dovetailed" on the seniority roster at Altoona Works; but, with the notation: "with no prior rights at Altoona."

Viewing the record in its most favorable light as to Claimants, the plea is made that we set aside the agreement entered into by their collective bargaining agent. Were we to do so we would act contrary to the dictates and intent of the statute. Our function is to interpret and apply collective bargaining agreements freely and lawfully made; not to dishonor them because the bargain made may subsequently be distasteful to one of the parties. We will deny the Claim.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September, 1965.

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 13830, DOCKET CL-14464

(Referee Dorsey)

Lest the uninformed be led astray in their conclusions on this matter, we deem it pertinent to point out the so-called "oral understanding" reached between the Division Chairman and Superintendent-Personnel limiting Claimants' prior rights, was not repugnant to or in conflict with Rule 3-E-1(c), but on the contrary, it was in conformity with a prior agreement reached between the "signatories" of the Master Agreement dated April 19, 1949—found in the record, reading in part as follows: (R., p. 9)

> "2—That in effecting this consolidation it will be understood that Group 2 employes shown on seniority rosters in the separate seniority districts immediately prior to April 15, 1949, will hold prior rights therein in their respective groups as such groups are defined and will begin to accumulate seniority in all Group 2 Classifications over the entire Altoona Works, effective April 15, 1949."

Thus, it was agreed that prior rights would be limited to those employes in the "separate seniority districts" at the time of the Agreement. Consequently, the Claimants' prior rights were accordingly limited to the period April 15, 1949 and not prior to that date. The parties (Division Chairman and Superintendent-Personnel) recognized the validity of the April 19, 1949 Agreement and abided by the tenor of that Agreement in limiting Claimants' prior right seniority. The award is correct in every respect.

/s/ W. F. Euker
/s/ R. A. DeRossett
/s/ C. H. Manoogian
/s/ G. L. Naylor
/s/ W. M. Roberts

LABOR MEMBER'S DISSENT TO AWARD 13830, DOCKET CL-14464

Award 13830 is entirely erroneous and most inexcusable for the plain fact of the matter is that the Carrier violated Rule 3-E-1 as correctly charged by the Employes but ignored by the Referee.

Rule 3-E-1, **a part of the only collective bargaining agreement between the parties,** reads as follows:

> "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.
>
> Employes transferring without their positions from one seniority district to another will rank in new seniority district from date of transfer, but will retain and continue to accumulate seniority in their home seniority district.
>
> (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. If no bids are received from active employes senior to those relieved for causes as shown in Rule 3-C-1, the senior qualified employes so relieved, in the seniority districts where the vacancies are bulletined will be notified, in turn, and given an option of transferring with the positions, Employes assigned positions under the provisions of this paragraph will carry their seniority with them and will retain and continue to accumulate seniority in their home seniority district.

In the event vacancies are not filled in the seniority district from which the positions are transferred, such positions shall be bulletined in the seniority district to which 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."

Rule 3-E-1 is a so-called "self executing" rule which sets out conditions under which employes **will carry their seniority with them** into other districts. Nothing in Rule 3-E-1, or anywhere else in the Clerks' Agreement, authorizes or permits a Superintendent-Personnel and a Division Chairman to change, alter or amend the terms thereof.

There was never any argument but that the Claimants involved herein were assigned to positions under the provisions of paragraph (c) and transferred with them to the Altoona Works. The argument of the Employes was that they should have been permitted to carry their seniority with them. The basis for the charge that the Carrier violated Rule 3-E-1 is that Claimants were not allowed to carry their seniority with them. The issue is correctly stated by the Referee as being "whether the contractual seniority rights of each of them (Claimants) were honored and properly prescribed on the posted seniority roster for the Altoona Works."

But for the alleged oral agreement, quoted in the Award, it is quite clear that the plain and unambiguous language of Rule 3-E-1(c) required that Claimants have full use of their seniority—not just a date which would not be honored—in the "district to which transferred."

Carrier's argument was that others had "prior rights" which should prevail over Claimants rights. Such arguments were beside the point and did not arise because of any misunderstanding with respect to Rule 3-E-1. It is axiomatic that, notwithstanding any so-called "prior rights", any time an employe who has not previously established any rights in a specific district is

transferred into such district with his position under the terms of Rule 3-E-1(c), **he carries his seniority with him.** This is true whether the new district be "Altoona Works" or "Car Shops." This is to occur under all circumstances identical with this case. Rule 3-E-1 purposely and plainly provides that employes, such as Claimants, **"will carry their seniority with them."** It is a plain and simple statement. It requires no further agreement and neither a local Carrier representative nor some local Organization representative could legally act to abrogate the plain intent thereof and deprive Claimants of the rights plainly granted therein.

The Referee is wrong when he honors the illegal "agreement" he quoted in the Award and ignores the fact that Rule 3-E-1(c) applied and that the Superintendent-Personnel and the Division Chairman were without authority to reach such an agreement, either oral or written.

As a practical matter this Board and the Referee sitting with it, cannot permit an alleged oral understanding to vary the plain and unambiguous terms of the written Agreement. Especially is this true here when neither party signatory to the Agreement authorized the local representatives to agree to alter terms of the current Clerks' Agreement.

That Carrier chose to "back" their local officers action does not legalize the act for it was contrary to law and contrary to many prior Awards holding, in harmony with the basic principle of law, that **only the parties to an agreement have the authority to revise or amend it.** Employes handed the following Awards to the Referee and quoted the following excerpts to him:

Award 2839, Luther W. Youngdahl, Referee

"The danger of permitting oral arrangements, made before or contemporaneously with the execution of written contracts, to modify or contradict the terms of the written Agreement is readily apparent. If such an oral agreement could be used as a defense against Rule 21, a similar defense could also be used against every other rule in the written Contract. It is obvious the Contract would lose its efficacy and usefulness in the settlement of disputes if such a procedure were permitted. When parties enter into written contracts, they are presumed to evidence in writing the results of their oral discussions. It is an elementary rule of law that such written contracts cannot be modified or contradicted by contemporaneous oral agreements. Aside from the legal aspects involved, it would be very dangerous practice in labor disputes to permit oral agreements to affect the terms of a written contract. The very purpose of the writing is to bind parties to certain rules and prevent claims of other understandings. It is protection both to the Carrier and Organization that the printed Agreement of May 1, 1940 can be changed or modified only by further negotiation, and if any changes are agreed upon, that such agreement be reduced to writing and the modified agreement executed by both parties. See 9526, First Division."

Award 5057, Peter M. Kelliher, Referee

"The claim is that the position that Mrs. Annie K. Jones vacated, and the subsequent vacancies resulting therefrom when she was assigned to the position advertised on Bulletin No. 4 for January 21, 1948, should have been bulletined in accordance with Rules 9 and 13. The Carrier admits that it did not fully comply with Rule 9(a). The

Carrier, however, relies upon an alleged verbal understanding between the then General Chairman, during that period, and one of the Company's representatives, and concludes that 'the claimant's authorized representative waived the application of the Rules involved.' It is a fundamental rule of contract construction that alleged oral understandings cannot be permitted to vary the terms of a written document."

Award 5059, Peter M. Kelliher, Referee

"The Carrier relies upon an alleged oral understanding of April 11, 1949, to sanction a procedure at variance with the Rules Agreement. This cannot be admitted under the parol evidence rule. This rule is not merely a rule of evidence but is one of substantive law (20 Am. Jur. 1100)."

Award 8009, Paul N. Guthrie, Referee

"The arrangement whereby Claimant worked on his rest day at straight time rate was made between two individuals and concurred in by the Carrier's officer. It has long been held by awards of this Division and other tribunals that an individual and the carrier cannot make an agreement to vary the requirements of the contract unless a specific rule so provides or the real contracting parties so agree."

Award 10034, J. Harvey Daly, Referee

"Rule 28(b) is an essential part of the existing contract between the parties; a contract that represents a negotiated agreement by the contracting parties; a contract that accurately, simply and clearly reflects the intentions of the contracting parties; a contract that neither the General Chairman of the Organization nor the Carrier's Chief of Personnel has the right to change or amend unilaterally; a contract that may only be revised or amended jointly by the contracting parties—as provided in Rule 34 of the Agreement and which reads as follows:

'Effective Date and Changes

'(a) This agreement supersedes all agreements, practices or understandings in conflict herewith, shall be effective February 1, 1948, and shall continue in effect until it is changed as provided herein or in accordance with the provisions of the Railway Labor Act, amended June 21, 1934.

(b) SHOULD EITHER PARTY DESIRE TO REVISE IT, thirty days' written advance notice, containing the proposed changes, shall be given and conference held within thirty days from the date of notice unless another date is mutually agreed on.'

"It would seem amply clear from the facts recited above that no one has the right to revise the existing contract but the contracting parties. To recognize or approve an interpretation of Rule 28(b)—even though supported by responsible Carrier and Organization officials—that is contrary to the simple, direct and clear language of that provision would, in fact, be revising the Agreement."

Yet, without even discussing Rule 3-F-1 in his Award, or indicating that he considered Rule 3-D-1(f) (a rule designed to prohibit Carrier from unilaterally making changes on a seniority roster other than adding thereto those, as here, who acquired seniority subsequent to the posting thereof, and as otherwise specified therein) as ceding to local representatives the authority to alter the terms of Rule 3-E-1(c), he somehow decided the alleged agreement took precedence over Rule 3-E-1.

I, therefore, dissent to that decision and this erroneous Award which arose therefrom.

D. E. Watkins
D. E. Watkins, Labor Member