Award No. 16490
Docket No. CL-16508

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6067) that:

(1) Carrier violated the current Clerks' Agreement at Cincinnati, Ohio, January 15, 1965, when it abolished Engine Dispatcher-Work Report Clerk Positions Nos. 18 and 19 and 34, transferred the work thereof from Cincinnati, (Riverside Yard) Ohio, to Sharonville, (Sharon Yards) Ohio, without giving the General Chairman proper notice and consummating an agreement prior to transferring said work.

(2) Carrier shall now compensate Mr. Fred Fox, former incumbent of Job No. 18, hours 3 P. M. to 11 P. M., rest days Thursday and Friday, rate of pay $21.36 per day; Mr. S. M. McNabb, Job No. 19, hours 11 P. M. to 7 A. M., off days Tuesday and Wednesday, rate of pay $21.36 per day; Mrs. May A. Harbsteit, Job No. 34, Relief Clerk, rest days Sunday and Monday, rate of pay four days at $21.36 per day, one day at $21.868 per day for all wage loss and/or differentials in rate of pay which may have been suffered by them, for each work day subsequent to January 15, 1965, which they would have worked prior to Carrier transferring their work and continuing until Carrier complies with the agreement.

(3) Carrier shall now compensate Fred W. Fox the customary mileage rate of 8 cents per mile for 163 miles, or $13.04 per day, five days per week, for January 16, 1965 and all subsequent dates until the Agreement has been complied with.

(4) Carrier shall reimburse any employe, or employes, who may have been adversely affected by displacement for loss of earnings resulting from the abolishment of jobs at Riverside Engine House. Such wage losses shall be determined by a joint check of the Carrier's Payroll Records.

EMPLOYES' STATEMENT OF FACTS: The work schedule of Fred W. Fox, S. M. McNabb and Mary A. Harbstreit subsequent to January 16, 1965 was as follows:

OPINION OF BOARD: The Brotherhood claims that the Carrier violated the terms of an Agreement between the parties dated, May 23, 1962, when, on January 6, 1965, it issued a Notice, over the signature of T. J. Brown, one of its Superintendents, abolishing the Engine Dispatcher-Work Report Clerk Positions Nos. 18, 19 and 34 at Riverside, Ohio and transferred the work to Sharon Yards, at Sharonville, Ohio, without giving the General Chairman of the Brotherhood the proper notice and consummating an agreement prior to the transferring of said work, as called for by the Agreement.

The Carrier does not deny the transfer of the work and claims such transfer, in the manner in which made, does not violate the provisions of the Agreement, as claimed by the Brotherhood.

The Agreement of May 23, 1962, reads as follows:

"NEW YORK CENTRAL SYSTEM

May 23, 1962

Messrs. H. J. Chapman
W. M. Pye
A. J. Dalsky
G. G. Younger
T. C. Burch

General Chairmen – Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

Gentlemen:

In order to resolve the issues covered by NMB Case A-6216, in connection with the transfer of work being performed on one of the New York Central operating districts to another New York Central operating district, as well as transfer of work or positions from one seniority district or city to another seniority district or city in the same operating district, it is agreed the following principles will govern:

1. The Carrier shall give 45 days' advance notice to the General Chairman or General Chairmen involved, but the effective date of the proposed change shall not be less than 90 days from the date of original notice unless otherwise agreed to. Such notice shall contain the following information:

a. Description of work to be transferred.

b. Titles, position numbers and rates of pay of positions to be abolished.

c. Titles, position numbers, duties and proposed rates of pay of positions to be established.

2. An Agreement shall be negotiated which shall include, but not be necessarily limited to:

a. Provisions for employes to follow work.

b. Rates of pay of the positions to be established.

c. Agreement coverage of such positions.

d. Training with regard to such positions.

e. Attrition or severance pay to the extent provided for in Attachment 'A' for regularly assigned employes adversely affected.

f. Provision that reduction in forces caused by reasons not directly resulting from the transfer or consolidation of work shall not be subject to the protective provisions of such agreement.

g. Preservation of rates.

h. Utilization of employes in conformity with Attachment B.

i. Transportation; personal and moving expenses.

j. Loss on rentals or home ownership.

k. Eligibility for any or all of the foregoing protective conditions.

l. Arbitration of disputes arising in the application or enforcement of the negotiated agreement provisions.

If this meets with your approval please signify by signing in the space provided below.

Very truly yours,

/s/ L. B. Fee

/s/ H. J. Chapman
New York & Eastern Districts and Grand Central Terminal

/s/ William M. Pye
Boston & Albany Division

/s/ A. J. Dalsky
Western District and Ohio Central Division

/s/ G. G. Younger
Northern District

/s/ T. C. Burch
Southern District"

Under date of January 6, 1965, over the signature of T. J. Brown, Superintendent, the Carrier issued the following notice:

"NEW YORK CENTRAL SYSTEM

N O T I C E

Indianapolis, Indiana
January 6, 1965

CLERICAL EMPLOYES — RIVERSIDE, OHIO

EFFECTIVE AT THE CLOSE OF WORK, FRIDAY, JANUARY 15, 1965, THE FOLLOWING CLERICAL POSITIONS WILL BE ABOLISHED AT RIVERSIDE OHIO:

JOB NO. 18 – Engine Dispatcher & Work Report Clerk – 2nd trick

JOB NO. 19 – Engine Dispatcher & Work Report Clerk – 3rd trick

JOB NO. 34 – Relief Engine Dispatcher and Work Report Clerk

/s/ T. J. Brown
Superintendent

cc: Bulletin Board – Riverside —
F. C. Ruskaup – 1
F. H. McHenry – 1
T. J. Brown – 1
M. S. Haynes – 1
T. C. Burch – 1"

The issue to be determined by this Board is whether or not the Carrier's notice dated January 6th, 1965, abolishing the positions therein enumerated, at Riverside, Ohio, as of January 15th, 1965, violated the provisions of the Agreement, between the parties, dated May 23rd, 1962.

The Brotherhood contends that the notice of January 6th, 1965, intended to transfer the work performed by the Claimants from one self-governed city to another, i.e. from Riverside Yard, Riverside, Ohio to the self-governed city of Sharonville, Ohio; that the provisions of the Agreement of May 23, 1962, are clear, specific and unambiguous in their terms; that under the terms of the Agreement, if the Carrier desired to transfer work being performed from one of its operating districts to another; from one seniority district or city to another seniority district or city, it was required to give proper notice to the General Chairman; that the General Chairman was to receive 45 days' advance notice of the Carrier's intention to make such transfer; that any changes contemplated could not be put into effect until 90 days from the date of the required notice; that the notice contain the various items listed in paragraph "1" of the Agreement; that an agreement be negotiated pursuant to the provisions of paragraph "2" of the Agreement; that the Notice dated January 6th, 1965, does not in any respect comply with the terms of the Agreement of May 23, 1962.

The Carrier does not deny that Riverside, Ohio and Sharonville, Ohio, are two separate and distinct political entities. It does contend, however, that the transfer of the work involved in this dispute is " * * * merely from one point in a city to another point in the same city * * *," and therefore the

provisions of the May 23, 1962, agreement do not apply. We note from the record before us that when the Carrier's Terminal Superintendent, Mr. Brown, denied the claim by letter dated June 8th, 1965, he stated in that letter among other things, the following:

> "The May 23, 1962 Agreement concerns the transferring of positions from one city to another or one seniority district to another. It was not meant to be applicable where work is merely moved from one point to another point within the confines of a **single terminal.** It is our position that all work which was transferred was within **Cincinnati Terminal** and on the same seniority roster." (Emphasis ours.)

The Agreement of May 23, 1962, does not contain the word "Terminal." If the parties intended that the provisions of the Agreement should apply to "Terminals" or "Metropolitan Areas" it should have so stated.

Webster's New Collegiate Dictionary defines a city as follows: —

> "A municipal corporation occupying a definite area and subject to the state from which it derives its powers."

The parties are in sharp disagreement in their interpretation of the Agreement.

We have always followed the basic and ordinary rules of contract law in interpreting and contruing a contract. We are bound by the terms and provisions of the Agreement before us. We have no power or authority and we may not make new provisions, abrogate provisions or alter existing provisions of the Agreement. That is the province of the parties themselves. We may only ascertain and give effect to the intention of the parties and that intention is to be deduced from the express language employed by them.

When we interpret and construe the provisions of an agreement, we inquire into what was the meaning of the agreement at the time and place it was made between the persons who were the parties to the agreement; the surrounding circumstances under which the agreement was made in order that we may judge the meaning of the words and the correct application of the language of the agreement; the main object of the agreement and the purpose which the parties sought to be accomplished by it must be considered in ascertaining their intention. We also give common or normal meaning to the language used in the agreement unless the circumstances under which the agreement was made show that a special meaning should be attached to the agreement.

The Agreement before us speaks for itself. It is clear and specific in its terms. It required the Carrier to do certain things and perform certain acts before it could transfer work from one city to another city.

The Carrier admits that Riverside, Ohio and Sharonville, Ohio, are two separate and distinct political entities or cities. Its contention that the work involved was merely transferring work from one point in a city to another point in the same city is without merit. Its contention that the work was being transferred within the Cincinnati Terminal is also without merit. There is no evidence to substantiate either contention. We hold that the notice dated January 6th, 1965, failed to comply with the express provisions of the Agreement of May 23rd, 1962, in that it failed to give proper notice and that no agreement was negotiated as required by the terms of the Agreement.

Claim is made by Mr. Fox, Item 3 of Claim, that he be compensated for necessary mileage for traveling to his position, a distance of 163 miles daily at the rate of 8 cents per mile.

The Carrier does not dispute nor does it offer any evidence to refute the mileage claimed by Fox. It does claim that there is no specific rule governing this type of situation; that Fox has cited no such rule and that in the absence of citing such a rule, that the claim is denied.

The Brotherhood contends that it was the intent and purpose of the Agreement that when work positions were to be transferred that the implementing agreement would contain the necessary protective benefits which would charge the Carrier's account with all expenses incurred by the employe or employes adversely affected as the result of such transfers. This is mere speculation, conjecture and supposition.

This Board has held on numerous occasions that it has no authority to assess damages based upon conjecture and speculation. The Agreement containing no specific rule providing for such reimbursement, we have no authority to supply such rule. We are constrained to deny Item 3 of the claim. See Awards 10598; 15533.

Under Item 4 of the Claim, the Brotherhood requests that:

> "(4) Carrier shall reimburse any employe, or employes, who may have been adversely affected by displacement for loss of earnings from the abolishment of jobs at Riverside Engine House. Such wage losses shall be determined by a joint check of the Carrier's Payroll Records."

This Board has on numerous occasions, passed upon claims of a similar nature. We have held such claims to be indefinite and vague and have denied them. See Awards 13559; 13652; 14401.

The burden of proving the names and/or identity of any employe or employes involved in claims before this Board rests with the Brotherhood.

In Award 15394, we said:

> "That the Board will not require a Carrier to assist those asserting a claim against it is well established."

In Award 15759, we said:

> "There is no rule in the Agreement which requires the Carrier to search its records to establish the Employes' claim."

See also Awards 9343; 10434; 12739; 13915; 14937; 15337.

The Brotherhood in support of its contention submits Award 10059. A reading of that Award discloses that the group involved was "readily identifiable." That situation does not exist in the dispute before us.

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 violated.

AWARD

Paragraph 1 is sustained.

Paragraph 2 of the Claim is sustained to the extent indicated in the Opinion.

Paragraph 3 of the Claim is denied.

Paragraph 4 of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.

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