

Award No. 18072
Docket No. TE-18266

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railway Company (Lake Region), that:

1. Carrier violated the Agreement between the parties when, on October 24, 1967, it transferred and assigned V. L. Winebrenner, an employe holding seniority on the Chicago Seniority District, to a position on the Fort Wayne Seniority District.

2. Carrier shall, as a result, compensate each of the following named employes one day's pay each week for as long as violation continues, beginning October 24, 1967:

Saturday - J. L. Treece
Sunday - A. P. Hubert
Monday - R. L. Bibler
Tuesday - L. M. Poyser
Wednesday - R. Peck
Thursday - J. Jaurigue
Friday - B. A. Barnahan

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective January 1, 1959, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

This claim was timely presented, progressed, including conference with the highest officer designated by the Carrier to receive appeals, and remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

In accordance with the above bulletins, claimants were assigned as follows:

- J. L. Treece - Middle trick (claiming Saturday work)
- A. P. Hubert - First trick (claiming Sunday work)
- R. L. Bibler - Third trick (claiming Monday work)
- L. M. Poyser - Was an extra man (claiming Tuesday work)
- R. Peck - Report operator (claiming Wednesday work)
- J. Jaurigue - Second trick (claiming Thursday work)
- B. A. Carnahan - Relief position F-17 (claiming Friday work)

V. L. Winebrenner, off the former Chicago Division Seniority District, was assigned to Relief Position F-16, and was the reason for which the claims were filed. Position F-16 relieves the following positions:

- Saturday - Car Distributor (Waltemath's rest day)
- Sunday - 1st trick (Hubert's rest day)
- Monday - 1st trick (Hubert's rest day)
- Tuesday - 2nd trick (Jaurigue's rest day)
- Wednesday - 2nd trick (Jaurigue's rest day)

It should be noted in passing that V. L. Winebrenner performs no service on Thursdays and Fridays, these being his rest days, notwithstanding that penalty claim is made for each Thursday and Friday.

The claim here in dispute was initiated by the General Chairman in a letter dated November 16, 1967, a copy of which is attached hereto and identified as Carrier's Exhibit F. The subsequent handling of the claim on the property was as follows:

CARRIER'S EXHIBIT G - January 12, 1968 - Denial of Claim - Superintendent to General Chairman

CARRIER'S EXHIBIT H - January 22, 1968 - Appeal - General Chairman to Manager Labor Relations

CARRIER'S EXHIBIT I - March 22, 1968 - Denial of Appeal - Manager Labor Relations to General Chairman

CARRIER'S EXHIBIT J - October 22, 1968 - Confirmation of conference and rejection of denial - General Chairman to Manager Labor Relations

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue to be determined herein is whether or not Carrier violated the applicable seniority rules when it assigned Car Distributor, V. L. Winebrenner, in the "FO" Office, Fort Wayne, Indiana, to the "FO" Office relocated at East Wayne, Indiana.

After bidding, Mr. Winebrenner was assigned to the bulletined position of Relief Assignment, "FO" telegraph office, East Wayne, Indiana, with assigned rest days on Thursday and Friday, and with a work schedule in relief of other operators on the other days of the week. Mr. Winebrenner's seniority originated in the Chicago Seniority Division.

Carrier's position is that Rule 8, which is a specific rule, governs in this dispute rather than Rule 7, which is a general rule, and that inasmuch as the "FO" office in downtown Fort Wayne, Indiana was relocated intact with the same positions and the performance of the same work and serving the same functions at the new location as was done at the old location, then Rule 8 was not violated; that the East Wayne Yard office ("Q" telegraph office) to where the "FO" office was moved is subject to bids on vacancies from the Chicago Division; that the "FO" office at Fort Wayne, Indiana was not closed nor a new office established at East Wayne Yard due to the "FO" office work and equipment being relocated as a unit; that Claimants failed to cite a rule of the Agreement in support of their demand for a penalty of one day's pay each week for so long as the violation continues.

The Organization's basic contention is that absent compliance with the protective agreement, the new positions at the East Wayne Yard are not subject to bids from employees with Chicago Division seniority inasmuch as Carrier did not have the right to transfer the special seniority bidding rights negotiated for the "FO" office, Fort Wayne, to the new positions in the yard created by operation of Rule 38 of the Agreement, and that such transfer of special seniority rights without negotiation and agreement violates the very essence of seniority; that the Organization did not agree that the new positions, required by Rule 38, would be subject to bid from employees on both divisions; that when Carrier permitted an employee with only Chicago Division seniority to relieve employees holding only Fort Wayne Division seniority, these latter employees' rights were invaded.

First, we find that the "FO" office relocated at the East Wayne yard must be considered a "new office", even though Carrier alleges that the positions and functions were the same. Rule 38 supports this conclusion. It provides that offices moved a distance in excess of five miles, as was done in this instance, shall be considered as a new office.

Rule 8 defines the Seniority Districts, the pertinent parts thereof providing as follows:

"RULE 8. SENIORITY DISTRICTS

Seniority districts for employees covered by this agreement shall be as follows:

Nickel Plate District:

* * * * *

FORT WAYNE DIVISION: WLE District Crossing, Bellevue, Ohio to GR&I Crossing, but not including Runnion Avenue Tower, Fort Wayne, Indiana, except that vacancies in 'FO' Office, Fort Wayne, will be subject to bids from the Chicago Division also.

CHICAGO DIVISION: GR&I Crossing, including Runnion Avenue Tower, Fort Wayne, Indiana, to Chicago, Illinois, but excluding third track at Argos, Indiana."

It is thus seen that the Seniority Districts as defined in said Rule 8 are primarily geographical and mutually exclusive, but make certain offices located within one geographical district or another subject to bids by employees with seniority in two separate seniority districts.

The Carrier has pointed out that the Fort Wayne Terminal is the western terminus of the Fort Wayne Division, and the Eastern terminus of the Chicago Division; that it extends from Mile Post 362.3 at New Haven, Indiana, west to Mile Post 373.2, which is west of Fort Wayne; that there were four offices within this terminal: "Q", Northeast Tower, "FO" office in downtown Fort Wayne, Indiana at the Passenger Depot, and Runnion Avenue; that "Q" and Northeast Tower offices are in the Fort Wayne Division, Runnion in the Chicago Division, and that the "FO" office was in both divisions.

Thus, the question remains, did the "FO" office become a Fort Wayne Division office because it was moved into the Fort Wayne Division territory, or does it retain its joint Division character because the only change in the nature of the office was geographical.

It clearly appears that location was the criteria used in dividing the offices of the Fort Wayne Terminal between the Fort Wayne District and the Chicago District and giving the "FO" office in downtown Fort Wayne to both districts. Inasmuch as the "FO" office according to Rule 38 was re-established as a new office, it is now in the exclusively Fort Wayne Division area, and thus it can be concluded that it became a Fort Wayne Division office. Therefore, the Agreement was violated when Carrier opened the position to bid by employees with Chicago Division seniority.

In regard to damages, Claimants failed to prove that they suffered any wage loss or monetary loss as a result of the violation of the Agreement by Carrier and, therefore, we must deny Part 2 of the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Part 1 of claim is sustained.

Part 2 of 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 September 1970.

DISSENT TO AWARD 18072, DOCKET TE-18266

The Referee and Carrier Members correctly found that the Agreement was violated when the Carrier opened the positions in question to bids by employes of another seniority district without benefit of an agreement to do so. To that extent the Labor Members were and are in agreement.

We must disagree, however, with the finding by the majority that the claimants were not shown to have suffered any loss as a result of the violation.

Those claimants who were improperly relieved on their rest days by the employe from the Chicago Division lost the work on those days. It is well settled that seniority district lines may not be crossed in providing rest day relief — Award 14896, e.g. It is also well settled by a long line of awards, typified by 9393, that in the absence of a proper relief employe or an extra employe, work on rest days belongs to the regular occupant of the position. To that extent and in that manner it was shown that the claimants did suffer losses, and their claims should have been sustained accordingly. The failure to do so constitutes error, requiring this partial dissent.

C. E. Kief
Labor Member