

Award No. 18292
Docket No. TE-18500

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, 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 Railroad (Lake Region), that:

1. The Carrier violated the Agreement between the parties when, on March 5, 1968, it abolished the Agent position at New Bavaria, Ohio and transferred the work of the position to another seniority district.

2. Carrier shall, as a result, compensate J. Sharpe for eight hours' pay each Monday; E. Spears for each Tuesday; F. Stelmachowicz for each Wednesday; W. Calvelage for each Thursday; and V. Iliff for each Friday, in like amount, commencing March 5, 1968 and continuing until violative practice is corrected.

Carrier Docket: 30-24-700 - BU-13649-18

EMPLOYES' 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.

Originally entered into by the New York, Chicago and St. Louis Railroad Company and its employees on the Nickel Plate, Lake Erie and Western and Clover Leaf Districts represented by The Order of Railroad Telegraphers, subsequent thereto Carrier merged with the Norfolk and Western Railway and the Organization became the T-C Division, Brotherhood of Railway and Airline Clerks. The effectiveness of the Agreement has been maintained throughout, subject to minor changes pursuant to Title I, Section 2, Sixth, of the Railway Labor Act, as amended.

Claim was timely presented, progressed, including conference with highest Carrier Officer designated to receive appeals, and has remained declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

OPINION OF BOARD: Carrier abolished a position covered by the Agreement with this Organization at New Bavaria, Ohio on the Clover Leaf District.

The work from that agency was transferred to Continental, Ohio, which is specifically placed on the Nickel Plate District.

The question is whether work can be transferred from one seniority district to another without negotiating an Agreement with the employees.

It is the position of the Carrier that this Board does not have jurisdiction in this case. However, following the finding in Award 18071 (Dugan), we agree that the question raised is properly before us.

After this claim was filed with Carrier, an official responded to the General Chairman on April 24, 1968:

"The Agent at Continental, Ohio, although he holds seniority only on the Ft. Wayne Division, must be considered an employee of former Ft. Wayne Division and former Clover Leaf Division because he already performs work for both districts."

It is the claim of the Organization that Section 5 (a) of the Memorandum Agreement of March 21, 1966 sustains its position:

"In consideration of the employee benefits provided herein and in the Merger Agreement of January 10, 1962, the Carrier shall be entitled to transfer the work of protected employees throughout the merged or consolidated system and the Organization's involved General Chairman will, subject to provisions contained in this Agreement, enter into implementing agreements providing for transfer of such work and the transfer of employees to follow their work, and the employees, their designated representatives and the Carrier will cooperate to that end."

Rule 8 outlines the Seniority District (Award 18072), and the cited Memorandum Agreement requires that the parties "cooperate" in actions such as that before us, and that the General Chairman "will . . . enter into" implementing agreements. The General Chairman was afforded no such opportunity.

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

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of November 1970.