NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22401
Docket Number SG-21946

THIRD DIVISION

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

(a) that the Carrier failed to apply the terms of the February 7, 1965 Mediation Agreement A-7128 and Article VIII of the November 16, 1971 Mediation Agreement Case A-8811, when Signal Maintainer P. R. Fritz was required to move because of a coordination and an operational change in the Santa Fe trackage at Colorado Springs, Colorado.

(b) in behalf of Signal Maintainer P. R. Fritz for three days pay at his pro rata rate account the Carrier allowed only two days pay in which to move instead of five required under the above named agreements; and $400.00 transfer allowance required under the agreements."

/General Chairman file: 090. Carrier file: 14-1300-40-27

OPINION OF BOARD: As a result of operational changes by the Carrier, approved by the Interstate Commerce Commission, certain work realignments occurred. Involved herein is the residence relocation of Claimant, who moved from Fountain, Colorado, to Fowler, Colorado, a distance in excess of 30 miles, as a result of his new assignment.

In an Order dated January 16, 1973, the Interstate Commerce Commission approved the changes requested by the Carrier, "subject to the same conditions for the protection of employees as prescribed in Oklahoma Ry. Co. Trustee Abandonment. . ." These so-called "Oklahoma Conditions" provided, as relevant to this dispute, reimbursement for the relocating employe's "own actual wage loss, not to exceed 2 days".

Carrier, in addition to other obligations specified in the "Oklahoma Conditions", reimbursed Claimant for such two days.

Claimant seeks additional reimbursement; specifically, three additional days (for a total of five) for loss of wages as well as an allowance of $400, pursuant to Article VIII of the Mediation Agreement Case A-8811, dated November 16, 1971, which reads as follows:

> "ARTICLE VIII - CHANGES OF RESIDENCE DUE TO TECHNOLOGICAL, OPERATIONAL OR ORGANIZATIONAL CHANGES.
>
> When a carrier makes a technological, operational, or organizational change requiring an employe to transfer to a new point of employment requiring him to move his residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employe shall be granted 5 working days instead of 'two working days' provided in Section 10(a) of said Agreement; and in addition to such benefits the employee shall receive a transfer allowance of $400. Under this provision, change of residence shall not be considered 'required' if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point."

The Organization also bases its claim on behalf of Claimant on Mediation Agreement A-7128 dated February 7, 1965. This Mediation Agreement, however, includes its own dispute resolution machinery, and even if the 1965 Mediation Agreement were found to be relevant, any dispute referring thereto would not appropriately be before the Board but rather should be directed to the dispute resolution procedure provided therein.

It is the principal procedural position of the Carrier that the ICC Order is dispositive of all transfer benefits, under the "Oklahoma Conditions", and that provisions under the Agreement between the parties which differ are not and cannot be applicable because of the preemptive position of the ICC Order.

The Organization argues that the ICC has previously ruled on similar situations, to the effect that its requirements upon the Carrier for protection of his displaced employes are minimal standards, not intended to inhibit any greater benefits which may be bargained

between the parties. The Organization points, for example, to Southern Ry. Co. - Control - Central of Georgia Ry. Co., 331 I.C.C. 151 (1967), which it quotes at pages 169-171 as follows:

> "Also, we point out that, under section 5(2)(f), we impose formulae of protective conditions upon the carriers 4/ seeking specific permissive authority under section 5(2) of the act, the purpose being to protect 4/ the interests of employees some of which in a particular case may well have been established under bargaining agreements executed pursuant to the Railway Labor Act. Rights obtained by employees under section 5(2) (f) are the minimum protection which an applicant carrier must provide in order to obtain this Commission's approval of its transaction. They are not, however, the maximum rights employees may gain. See the last sentence of section 5(2) (f), and also Overnite Transportation Co. v. N.L.R.B., decided February 2, 1967, by the United States Court of Appeals for the Fourth Circuit. The rights of railroad employees under their collective bargaining agreements, under the Washington Agreement, and under the protective conditions imposed upon the carriers under section 5(2) (f) are independent, separate, and distinct rights. We have historically recognized the independent nature of those rights and have distinguished the employee rights derived from collective bargaining agreements from those derived from conditions which we have imposed upon carriers. The rights under the former are based upon private contracts; those under the latter stem from our statutory duty to protect employees. The existence of multiple sources of employee protection does not imply, however, that any employee necessarily has a right to duplicative benefits from all sources. These protective conditions imposed upon carriers under section 5(2) (f) which provide affected employees compensatory protections for wages, fringe benefits, and other losses are designed to apply after the carriers have arrived at their adjustments of labor forces in accordance 4/ with the governing provisions of their collective bargaining agreements so that the carriers may be enabled to carry an approved transaction into effect. Texas & N.O.R. Co. v Brotherhood of Railroad Trainmen, (5th Cir., 1962) 307 F.2d 151. * * *

> "The designated 'exclusive and plenary power' of the Commission in section 5(11) cannot be so broadly construed as to brush aside all laws - be they statutorily created anti-trust laws or voluntary contractual arrangements made binding by the force of law. * * *
>
> In the railway labor arena, our jurisdiction extends to imposing conditions upon applicant. Questions arising from protective agreements entered into by the parties ordinarily are beyond our reach, and in the hands of local courts, Texas & N.O.R. Co. v Brotherhood of Railroad Trainmen, supra. The Washington Agreement is such a protective agreement, and it is not only an agreement between certain carriers and employee organizations; but it is also an agreement between each carrier and its own employees. Rather than a restraint on the transaction here involved, it is furtherance thereof, hence it is not invalidated by section 5(11), for without something comparable to it, section 6 of the Railway Labor Act (45 U.S.C. 156) would seriously impede mergers." (Emphasis supplied unless otherwise indicated by footnote 4)

In addition, the Organization refers to 348 I.C.C. 53 (1975), with reference to the Central Railroad Company of New Jersey Abandonment, Finance Docket No. 26659 as follows:

> "/W/e find nothing in the prior report or the record indicating that this Commission's labor protective conditions herein were meant to supersede those in any collective bargaining agreement, including the aforesaid February 7, 1965 Agreement. ID. at 58.
>
> Earlier in its decision the Commission had stated that: 'In our opinion, and, as union-petitioners contend, labor protection, imposed by this Commission, should not preempt collective bargaining protection, unless clearly indicated otherwise.' ID. at 56. Accordingly, the Commission ordered that:

> "/T/he prior report...be, and it is hereby, clarified and supplemented herein to find that the labor protective conditions imposed therein did not preempt any preexisting (or subsequent) protection which may have been negotiated in collective bargaining agreements, including the Agreement dated February 7, 1965.....Id."

It should be noted that the Organization found support for its position in the two cases cited above from findings of the Interstate Commerce Commission. It follows therefore that the Organization, joined if feasible by the Carrier but if not on its own, should promptly seek interpretation of the Commission's order in the present instance from the Commission.

The Board is asked by the Organization to rely on the reasoning and findings in Award No. 20319 (Lazar). That dispute involved situations somewhat analogous to the present dispute, but with many other related issues involved as well, and the Board declines to apply the particular facts of that dispute to the one now before it.

Interpretation from the Commission may well make clear that its order provides for minimal standards, not interfering with any more generous provisions in the basic Agreement between the parties. If so, this should lend ample support to the Organization's claim against the Carrier.

If the reply from the Commission does not resolve the issue, however, the Board remains available to (and is required to) consider its appropriate role, under the Railway Labor Act, in resolving the dispute with finality.

The Board will remand the dispute to the parties for the purpose of seeking interpretation of the ICC Order as to their dispute. Should differences remain thereafter which are the proper subject for resolution by this Board, the Board will resume its consideration and make definitive findings.

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 dispute is improperly before the Board at this time.

A W A R D

Claim remanded to the parties as provided in the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1979.