NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23193
THIRD DIVISION Docket Number TD-22930

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Consolidated Rail Corporation

STATEMENT OF CLAIM: System Docket No. CR-23, Case No. 7-4, Claimant E. C. Myers

Please allow 8 hours at time and one-half rate on April 26, 27, May 3, 4, 10, 11, 17, 18, 24, 25, 31 and June 1 account working 2nd trick when I should have been working 1st trick on TD-1 position.

Please allow 8 hours at time and one-half rate on April 28, May 5 and 9 account working 3rd trick when I should have been working 1st trick on TD-1 position.

Please allow 8 hours at pro-rata rate on April 22, 23, 29, 30, May 6, 7, 13, 14, 20, 21, 27, 28, June 4 and 3 account not working when I should have been working 1st trick on TD-1 position.

Please allow 8 hours at time and one-half on April 24, 25, May 1, 2, 9, 16, 23, 30 and June 5 account working 1st trick when I should have been observing rest days on TD-1 position.

OPINION OF BOARD: The Organization was party to an agreement with the Pennsylvania Railroad Company - a predecessor to Penn Central - which line was ultimately conveyed to Conrail.

Insofar as this dispute is concerned, the Claimant had been regularly assigned to the first shift position (TD-1) on the Section A Desk at the Altoona, Pennsylvania Train Dispatching Office, with rest days of Sundays and Mondays.

In late - October of 1976, Conrail proposed certain re-arrangements of Train Dispatcher districts, including that Section "C" Train Dispatching Desk in Altoona be abolished.

The pertinent agreement indicated that the manner in which seniority of Train Dispatchers affected by merger or separation of districts is to be exercised should be adjusted by agreement in writing. Certain meetings were held to discuss the Carrier's proposal, but no written agreement was reached, according to the Employes. Notwithstanding that, a notice was issued advising that certain districts would be transferred. As a result of the implementation of those announcements, the Claimant was displaced from his regular assigned Position TD-1, and was compelled to exercise seniority to another position. The instant claim was submitted asserting an improper abolishment.

According to the Carrier, the Employes did not identify the alleged violation for a period of time, and it was not until subsequent discussions that it was able to discover that the Employes were suggesting an alleged violation of Regulation 3-G-1. Further, the Carrier states that the reallocation was made with approval and assistance of the Organization, and in accordance with Section 503 of Title V of the Regional Rail Reorganization Act of 1973 which, along with the August 21, 1975 ATDA Implementing Agreement supersedes the 3-G-1 regulation.

The Carrier asserts - and we have noted - that the original October 22, 1976 notice stated that the transfers involved "...will be made in accordance with Section 503 of Title V of the R.R.R. Act.", which section states that the corporation has the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties, etc. Further, the Carrier asserts that it reached agreement with the Organization, which agreement was set forth in a December 6, 1976 letter distributed to the various parties; which concluded with the request that the affected individuals sign and return a copy of the agreement. The Chairman in question did not comply with that request, but he never raised any question as to the propriety of the asserted understanding.

In addition to its defense on the merits of the dispute, the Carrier has raised the jurisdictional question of appropriate forum. In this regard, the Carrier insists that this dispute raises, in direct terms, various issues regarding the interpretation or application of section 503 of Title V of the Regional Rail Reorganization Act. That defense was raised on the property, and repeated here, inasmuch as the Carrier insists that subject to 2 conditions (not applicable in this case) freedom of assignment is given to it, and by necessity, Section 503 supersedes understandings such as 3-G-1.

Because the Carrier has raised the 503 defense on the property, it suggests that the dispute is not properly before this Division because of Section 507 of Title V. That section asserts that any dispute or controversy with respect to the interpretation, application or enforcement of the provisions of Title V (with certain exceptions not here applicable) may be submitted by either party to an Adjustment Board for final and binding decision thereon, as provided in Section 3 Second of the Railway Labor Act.

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A Special Board of Adjustment has been established pursuant to an agreement between the Carrier and the Organizations (including ATDA), which Board is designated as Special Board of Adjustment 880. Thus, the Third Division lacks jurisdiction over this claim, and it must be dismissed for want of jurisdiction.

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In response, in the reply to Carrier Ex Parte Submission, the Organization states that this Board has jurisdiction because the claim is based on the agreement, not the R.R.R. Act. Further, in its Brief to this Board, the Organization repeats various portions of the Railway Labor Act, and urges that we have jurisdiction to resolve, and to interpret or apply agreements.

While we do not propose to issue an all-inclusive Award dealing with all aspects of jurisdiction, nonetheless we are inclined to agree with Carrier in this particular case. Although, concededly, the Employes have submitted a claim based upon certain agreement language, nonetheless, the October 22, 1976 notification by the Carrier was specific in its statement that its action was being taken in accordance with Section 503 of the R.R.R. Act, which appears to grant to Carrier certain assignment, relocation, etc., rights. Thus, it appears obvious that in this dispute, the central issue revolves around the rights which may have been granted to the Carrier by that Act; and it is an over-simplification to merely state that the claim is based on agreement language.

Were we to issue an Award based on certain language of the agreement, that would not dispose of the case, because the record is specifically clear that Section 503 of the Act was raised in a timely manner on the property, and thus, a full exploration of the rights of the parties can only be achieved after a Section 503 adjudication is made. Yet, Section 507 precludes us from making such a determination, because it says <u>any</u> dispute or controversy concerning enforcement of the provisions of the Title (again, with certain exceptions not applicable) may be submitted by either party to an Adjustment Board for final and binding decision.

As was noted above, Special Board 880 was created for just that purpose.

We do not find it necessary to cite the numerous Awards of this Division which have held that we are without jurisdiction to issue awards when exclusive jurisdiction to resolve disputes under certain circumstances has been granted to other forums. However, we do invite attention to Award 21706 and 20289. Accordingly, we will dismiss the claim for lack of jurisdiction.

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 the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: C. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.

LABOR MEMBER'S DISSENT TO
AWARD 23193 DOCKET TD-22930

Award 23193 made an erroneous decision when the claim in Docket TD-22930 was dismissed for lack of jurisdiction.

Award 23193 stated in part:

> "Although, concededly, the Employes have submitted a claim based upon certain agreement language, nonetheless, the October 22, 1976 notification by the Carrier was specific in its statement that its action was being taken in accordance with Section 503 of the R.R.R. Act, which appears to grant to Carrier certain assignment, relocation, etc., rights."

While the Carrier did make reference to Section 503 of the R.R.R. Act, the October 22, 1976 notification by the Carrier did not specify and/or cover the territory which is involved in this dispute. This dispute involved the train dispatching district remaining on Altoona Dispatching Office Desk "C" after the transfer of work or train dispatching territory from the Altoona Dispatching Office to the Hornell Dispatching Office, contemplated in the Carrier's notification of October 22, 1976, had already been accomplished.

The Carrier acknowledged this in the Carrier's Ex Parte Submission when the Carrier stated:

> "The transfer of the Corning Secondary and Watkins Glen Secondary Tracks from the Altoona Dispatching Office to the Hornell Dispatching Office, Atlantic Region, was consummated effective 7:00 A.M., January 21, 1977. By letter dated January 21, 1977, the Incumbents of the four regular positions on Desk "C" were notified of the transfer; that the remaining territory handled on Desk "C" would be transferred to Dispatcher Desk "D"; that their positions would be abolished effective 7:00 A.M., Monday, January 24, 1977, and that they could exercise seniority as provided by the regulations." (EMPHASIS SUPPLIED)

The Carrier acknowledged this on the property when the Carrier stated:

"On or about January 3, 1977, due to the dispatching of the Corning Secondary being reassigned to the Atlantic Region, the following remaining territory handled on the "C" Desk will be transferred to the "D" Desk:

Harrisburg-Buffalo Main Line - Farwell to Molly
Watsontown Secondary
Elmira Secondary
Williamsport Branch and Secondary
Corning Secondary - CPAD to SR
Avis Branch

The Catawissa Branch between Newberry Jct. and Montgomery will be added to "D" Desk. " (EMPHASIS SUPPLIED)

The October 22, 1976 notification by the Carrier, wherein Section 503 of the R.R.R. Act was relied upon, cannot be construed to be applicable to the remaining dispatching districts dispatched by Altoona Dispatching Office Desk "C". This remaining Altoona Dispatching Office Desk "C" dispatching district was simply merged with the Altoona Dispatching Office Desk "D" train dispatching district. Such a merger was covered by Agreement Regulation 3-G-1 which specifically covers the merging of train dispatching districts requiring that "the manner in which the seniority of Train Dispatchers affected is to be exercised shall be adjusted by agreement, in writing, between the General Chairman and the Manager of Labor Relations".

The Carrier gave notification of the merging of these two train dispatching districts. If the October 22, 1976 notification had covered this merging of train dispatching districts, such additional notice would not have been required or been given.

Section 504 (a) of Title V of the R.R.R. Act provides in pertinent part:

"INTERIM APPLICATION. -- Until completion of the agreements provided for under subsection (d) of this section, the Corporation shall, as though an original party thereto, assume and apply on the particular"

"lines, properties, or facilities acquired all obligations under existing collective-bargaining agreements covering all crafts and classes employed thereon, except that the Agreement of May 1936, Washington, D. C. and provisions in other existing job stablilization agreements shall not be applicable to transactions effected pursuant to this Act with respect to which the provisions of section 505 of this title shall be superseding and controlling."

Therefore, the Board, in Award 23193, should have performed its function and accomplished its purpose by adjudicating the dispute contained in Docket TD-22930 by interpreting and/or applying the language contained in the Agreement regarding the merging of train dispatching districts.

The Board in Award 23174 and Award 23175 considered disputes involving the same Carrier notification and the same incident, i.e. the merging of Altoona Dispatching Office Desk "C" and Desk "D" dispatching districts and correctly adjudicated those disputes upon consideration of the applicable agreement language. The Majority in Award 23193 was in error when Carrier's unsupported allegation was accepted as fact and when sufficient consideration was not given to the record to ascertain the actual cause of the complaint raised in this dispute.

While Regulation 3-G-1 has since been replaced by the writing of a single collective-bargaining agreement as provided in Section 504 (d) of the R.R.R. Act (making questions regarding the interpretation or application of Regulatin 3-G-1 moot), the error in Award 23193 cannot go uncontested and, therefore, I must dissent.

J. P. Erickson
Labor Member

CARRIER MEMBERS' ANSWER TO LABOR MEMBERS' DISSENT
TO AWARD 23193, DOCKET TD-22930
(REFEREE SICKLES)

The Dissentor's argument is, as we understand it, that Section 503 of the Triple "R" Act was not applicable to the merging of the work on Desk "C" with Desk "D" and the consequent abolishment of Desk "C". The letter of October 22, 1976, specifically stated:

> "5) Three 7-day positions of train dispatcher in the Altoona office (Desk C) will be abolished."

The letter of December 10, 1976, addressed to the General Chairman then supplemented the letter of October 22, 1976, and stated:

> "Dear Sir:
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> "This will supplement our letter of October 22 in which we informed you that on or about January 3, 1977, Desk C in the Altoona Train Dispatching Office would be abolished.
>
> "At our conference in Pittsburgh on November 3, we discussed the reallocation of dispatching territories among the remaining desks in the Altoona Office and reached the following understandings:
>
> "1) After the revisions of territory on Desks B, D and E have been in effect for at lease 30 calendar days, the A.T.D.A. may, if it feels that one or more of such desks are overloaded, submit written request to this office that a joint study be made of such allegedly overloaded desks.
>
> "2) A joint study will be made by a representative of the Carrier and a representative of the A.T.D.A. of the desks in question to determine if an overloaded condition exists and what can be done to correct such condition.
>
> "3) If the A.T.D.A. is not satisfied with the results of the joint study, it may then

"directly invoke the services of the Joint Committee established under the National Agreement of 1937.

"If our understandings are correctly stated would you please sign and return one copy of this letter." (Emphasis Supplied)

In short, the transfers to be made pursuant to Section 503 of Title V of the Triple "R" Act were specifically identified and addressed in reference to the Altoona Office when the Desk "C" abolishment was discussed in conference on November 3, 1976, and memoralized by letter dated December 10, 1976.

Furthermore, the Organization never argued, as the Dissentor does, that Section 503 was only applicable to the merging of territories identified in the letter of October 22, 1976. Their sole argument on the property and before the Board dealing with the provisions of Section 503 was as stated in the General Chairman's letter dated June 20, 1978, reading, in part, as follows:

"The American Train Dispatchers Association hereby rejects your denial, it is our opinion that the Rail Reorganization Act of 1973 does not supersede the Schedule Agreement in effect on the former PRR and Penn Central Railroad, and that regulation 3-G-1 was violated"

Their position, succinctly stated, was that the Triple "R" Act did not supersede Rule 3-G-1 but they did not contend Section 503 only applied to one aspect of the merged dispatching districts and as we noted earlier such an argument, even if had been made, was premised on a false bottom because each and every phase of the changes were inextricably connected as evidenced by the correspondence itself.

In connection with the Dissentor's comments on Awards 23174 and 23175, we will incorporate by reference in this Answer our Dissents to those Awards. While we concur in the Majority's dismissal of the within dispute, on jurisdictional grounds, we would have also concurred had the claim been rejected on the Merits.

W. F. Euker

P. E. LaCosse

J. E. Mason

J. R. O'Connell

P. V. Varga