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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30632
Docket No. CL-30471
94-3-92-3-322

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications International
(Union

PARTIES TO DISPUTE:

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(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10793) that:

- (a) The Carrier violated the provisions and intent of the Clerks' General Agreement, primarily Rules 12, 16, 18, 23, 54, 61 and Addendum No. 5, when at the close of business on March 25, 1990 it unilaterally abolished all clerical extra board positions headquartered at Gladstone, Virginia and, effective March 26, 1990, established clerical extra board positions headquartered at Riverville, Virginia and concurrent wherewith unilaterally transferred certain additional calling work from Richmond, Virginia to Gladstone, Virginia, and
- (b) The Carrier shall now return the Gladstone, Virginia extra board to its status as it existed on March 25, 1990 until this matter is properly handled with the employees' representative and,
- (c) The Carrier shall allow extra board employees spuriously headquartered at Riverville, Virginia travel time and mileage expense from Gladstone, Virginia beginning on March 26, 1990 and continuing until this matter is properly handled between the parties.
- (d) The Carrier shall now allow the Operator Clerk at Gladstone, Virginia a minimum call under the provisions of Rule 34, in addition to other earnings, for each instance where he/she is required to perform calling functions formerly assigned to be performed at Richmond, Virginia and which were unilaterally transferred to Gladstone, Virginia beginning on March 26, 1990 and continuing until this transfer of work is properly handled."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The relevant facts of this case are basically undisputed. Prior to March 25, 1990, clerical vacancies at Charlottesville and Gordonsville, Virginia, were filled by an extra board headquartered at Charlottesville, Virginia. Vacancies at Bremono, Gladstone and Lynchburg, Virginia, were filled by an extra board headquartered at Gladstone, Virginia. At the close of business on March 25, 1990, the Carrier abolished these two extra boards and established a new extra board headquartered at Riverville, Virginia, which filled vacancies at all of the above locations.

Prior to the consolidation of these extra boards, the Gladstone extra board was administered by Operator Clerks working at Gladstone. The Charlottesville extra board was administered by a Chief Clerk and Assistant Chief Clerks working at a Carrier facility in Richmond, Virginia. On May 17, 1990, the parties agreed that those aspects of the clerical calling function involved in administering the new extra board at Riverville which were being performed in Richmond, would be transferred to Operator Clerks at Gladstone. The parties dispute whether any of the clerical calling functions normally done at Richmond were improperly assigned to Operator Clerks at Gladstone between March 26 and May 16, 1990.

By letter dated May 3, 1990, the Organization filed a claim alleging that the unilateral abolishment of the extra board at Gladstone and the establishment of new extra board at Riverville violated various terms of the parties' Agreement. The claim also alleged that the calling of extra board Clerks for Charlottesville and Gordonsville had been improperly transferred from Richmond to Gladstone, Virginia.

The Organization maintains that the Carrier's actions violated various sections of Rule 12 which deals with and is entitled "Zoned Extra Boards." Section 3 of that Rule states that "...[i]t is the intent of the parties that zoned extra boards will be established within each seniority district in such a manner as to minimize traveling away from assigned headquarters point." The Organization contends that there are no work and training opportunities for extra board Clerks at their new headquarters in Riverville. Therefore, it alleges that the establishment of this new extra board has resulted in extra board Clerks having to travel to all of their assignments. The Organization insists that rather than minimizing travel, the establishment of the new extra board has maximized the travel requirements for extra board Clerks. Thus, the Organization argues that the establishment of the Riverville headquarters violated Section 3 of Rule 12.

The Organization maintains that the parties never intended to have an extra board headquartered at a location such as Riverville, where there are no clerical vacancies or Carrier operations requiring extra board Clerks. It contends that the requirement of Section 4 of Rule 12, that "...[e]ach Zoned extra board will have a common headquarters point," has been consistently interpreted by the parties for the past ten years as requiring that a headquarters be situated at a location where extra board Clerks are assigned work. The Organization notes that it is undisputed that Riverville does not satisfy that requirement. Therefore, it argues that its establishment as an extra board headquarters violates Section 4 of Rule 12 and the parties' longstanding practice.

Besides lacking clerical activities, the Organization contends that Riverville is an unmanned, isolated point on the Carrier's line which has no Carrier facilities whatsoever. It alleges that the Carrier is required to "reasonably protect" the health and safety of its employees and provide its women employees with "...working conditions [which] must be healthful and fitted to their needs" (Rules 16 and 61(a)). The Organization notes that two of the extra board Clerks assigned to Riverville are women. By designating Riverville as an extra board headquarters, the Organization insists that the Carrier violated its obligation to provide its employees, especially its women employees, with safe and healthy working conditions.

The Organization notes that Section 17 of Rule 12 states that in order "...[t]o assure that ... extra boards ... work to the advantage of all parties concerned," the parties "...will meet at the request of either party for the purpose of making necessary adjustments." It maintains that the Carrier did not meet with the Organization before abolishing the old extra boards and creating a new extra board at Riverville. Therefore, the Organization argues that the Carrier's unilateral actions violated Section 17 of Rule 12.

The Organization also notes that pursuant to Section 4 of Rule 12, the Carrier must pay extra board employees travel expenses if they are required to travel more than 30 miles from their assigned headquarters point. It alleges that it recently prevailed in an arbitration in which it claimed that extra board employees headquartered at Gladstone were entitled to travel pay and expenses when assigned to Lynchburg, because they had to travel 30.3 miles. The Organization claims that Riverville is less than 30 miles from Lynchburg. Thus, it argues that the Carrier transferred its extra board headquarters from Gladstone to Riverville in order to avoid paying travel expenses to extra board Clerks assigned to Lynchburg. The Organization insists that such a motivation is improper.

Finally, the Organization points out that Rule 23 requires the Carrier to provide 30 days' advance written notice to the General Chairman "...[w]hen for any reason, offices or departments covered by the same seniority roster are consolidated." It contends that after the Riverville headquarters was established, the Carrier partially consolidated the clerical calling functions of the old extra boards, without adequate and timely notice to the Organization, by having Gladstone Clerks perform clerical calling functions which were performed previously by higher paid Clerks in Richmond. The Organization argues that the Operator Clerk at Gladstone should be compensated for having to do work which was formerly performed at Richmond.

Accordingly, and for the foregoing reasons, the Organization requests that its claim be sustained.

The Carrier, on the other hand, maintains that the establishment of the extra board at Riverville was done in strict accordance with the Agreement. It contends that there is no language in the Agreement which specifies where an extra board must be located. The Carrier alleges that since Rule 12 is entitled "Zoned Extra Boards," it is clear that the parties intended that extra boards would cover a zone of positions. It points out that Rule 12 places no restrictions on the size of a particular zone.

The Carrier also argues that since Sections 3 and 4 of the Rule deal with employee travel, there can be no doubt that the parties understood that extra board Clerks could be required to travel to fulfill their assignments. Thus, the Carrier insists that nothing in the Agreement prevents it from establishing an extra board headquarters at Riverville.

The Carrier disputes the Organization's contention that the establishment of an extra board at Riverville increased the need for employees to travel. It notes that Section 4 of Rule 12 provides "...that traveling within a thirty (30) mile radius of the assigned headquarters point will not constitute 'travel away from headquarters.'" The Carrier maintains that the bulk of its extra board positions are at Lynchburg and Gladstone. It contends that those positions are located within a 30 mile radius of Riverville. Therefore, the Carrier argues that the creation of the Riverville headquarters did not increase employee travel as that term is defined in the Agreement.

The Carrier maintains that it does not need to obtain the consent of the Organization prior to the abolishment or establishment of an extra board. It contends that there is no language in the Agreement restricting the Carrier's unilateral right to establish or abolish extra boards. Therefore, the Carrier insists that it acted within its rights when it unilaterally abolished two extra boards and replaced it with another.

The Carrier maintains that the purpose of an extra board's headquarters point is to define the center of the zone. It contends that the headquarters point need not serve as a reporting point for duty. Thus, the Carrier rejects any suggestion by the Organization that the Riverville headquarters must have certain types of facilities. It asserts that employees assigned to the Riverville headquarters are called at their homes and instructed to report to locations where vacancies exist. Thus, the Carrier insists that the employees never report to Riverville. Therefore, it argues that any deficiencies in the facilities at Riverville are irrelevant to this dispute.

Finally, the Carrier denies that any calling duties for vacancies at Charlottesville and Gordonsville were transferred from Richmond to Gladstone, Virginia. It maintains that the Organization failed to produce any evidence in support of this allegation. The Carrier contends that numerous Board decisions have consistently held that it is incumbent upon the moving party to sustain the burden of proof. It argues that the Organization has not met its burden. Therefore, the Carrier insists that this aspect of the Organization's claim also must be denied.

Accordingly, and for the foregoing reasons, the Carrier requests that the Organization's claim be denied.

After careful review of the entire record, we are convinced that the claim must be denied.

The Organization presented no evidence that any provision of the Agreement prohibits the Carrier from unilaterally abolishing and establishing extra board zones. Section 17 of Rule 12 states that the parties "...will meet at the request of either party for the purpose of making any necessary adjustments" in the Carrier's extra boards. Notwithstanding the Organization's suggestion to the contrary, this Section of Rule 12 does not mean that the parties must meet before the Carrier may abolish or establish an extra board zone. No evidence in support of that interpretation was offered by the Organization.

Rather, this section of Rule 12 obligates the parties to meet if either of them requests a meeting to discuss adjustments in an extra board zone. Here, however, there is no evidence that the Organization requested such a meeting either before or after the Carrier abolished or established the extra board zones at issue in this dispute. Therefore, the Carrier cannot be found to have violated Section 17 of Rule 12. The Organization failed to cite any other section of the Agreement in support of its contention that the Carrier may not unilaterally abolish or establish extra board zones. Therefore, we find that the Carrier is free to take such unilateral action.

The Organization has a number of objections which apply specifically to the Riverville headquarters apart from its unilateral establishment by Carrier. However, we find none of these objections to be persuasive.

The Organization objects to the fact that no work or training is available for extra board clerical employees at Riverville. However, nothing in the Agreement requires that work or training be available to extra board employees at their zone headquarters. The fact that such work or training normally has been available at extra board headquarters has not created a past practice which is binding on the Carrier. Thus, the Carrier remains free to establish an extra board zone headquarters where no extra board work or training will be performed.

The Organization correctly notes that designating a headquarters where no work or training will be performed will automatically result in extra board employees having to travel to their assignments. However, nothing in the Agreement prohibits the Carrier from requiring extra board employees to travel to their assignments. To the contrary, Rule 12 contains detailed sections governing the travel of extra board employees. Thus, it is clear that the parties knew and expected that extra board employees would be traveling to their assignments. So long as the Carrier complies with the Agreement's requirements concerning the travel of extra board employees, it is free to establish an extra board zone which results in extra board employees being required to travel.

The Organization also correctly notes that the parties have expressed their intent to establish extra board zones which "...minimize traveling away from assigned headquarters point[s]." However, the Organization failed to present persuasive evidence that the establishment of the Riverville extra board zone has increased the traveling of employees away from their headquarters point. Pursuant to the Agreement, all travel by extra board employees is not deemed "...traveling away from [an] assigned headquarters point." The parties have "...recognized that traveling within a thirty (30) mile radius of [an] assigned headquarters point will not constitute 'travel away from headquarters'" (Rule 12, Section 4). Thus, the relevant issue is not whether the establishment of the Riverville headquarters has increased traveling by extra board employees. Rather, the relevant question is whether the establishment of the Riverville headquarters has increased the traveling of extra board employees to points outside of a 30 mile radius of Riverville.

Here, there is absolutely no evidence that the establishment of the Riverville headquarters increased the traveling of extra board employees to assignments outside of a 30 mile radius of Riverville. The Carrier presented evidence that the bulk of the assignments given to Riverville extra board employees fall within a 30 mile radius of Riverville. Moreover, the Organization presented evidence that the establishment of the Riverville zone has decreased the need of extra board employees to travel more than 30 miles from their headquarters point. When the headquarters point was in Gladstone, extra board employees had to travel more than 30 miles when they were assigned to Lynchburg. Now that the headquarters has been moved to Riverville, extra board employees, according to the Organization, need travel less than 30 miles when assigned to Lynchburg. Thus, the evidence of record demonstrates that the establishment of the Riverville zone has minimized the traveling of extra board employees away from their headquarters point, as that term is defined in the Agreement.

There is also no evidence that the Carrier improperly attempted to undermine a decision of this Board by establishing an extra board headquarters in Riverville. To the contrary, as noted above, the Carrier fulfilled its contractual commitment to minimize travel away from assigned headquarters points, when it established a headquarters at Riverville.

The Organization has shown that the facilities at Riverville are lacking in basic amenities. However, there is absolutely no evidence that extra board employees actually report to facilities at Riverville. Instead, they are contacted at home and told where to report. Thus, there is no evidence that the Carrier violated its duty to provide its employees with safe and healthy working conditions by establishing an extra board headquarters at Riverville.

Finally, there is no persuasive evidence that the Carrier improperly assigned clerical calling work normally done in Richmond to Clerks in Gladstone. Any confusion which might have resulted in a Clerk at Gladstone calling an extra board employee who might also have been contacted by a Clerk from Richmond, was at most, a de minimus violation of the Agreement. It certainly does not merit an award of damages.

Accordingly, and for the foregoing reasons, the Organization's claim is denied in its entirety.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.