Award No. 9193
Docket No. CL-8754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) That the Carrier violated and continues to violate the Clerical Agreement when beginning on or about April 12, 1955, it did without conference or agreement arbitrarily and unilaterally remove work from the Huntington, West Virginia seniority district and transfer same to the Ashland, Kentucky seniority district and place it at Ashland, Kentucky, and

(b) That each and every employe whose position was nominally abolished, other employes at interest who in any way suffered wage loss or were adversely affected through the arbitrary action of the Carrier in disregarding their seniority rights and removing their work to another seniority district and denying them the right to follow such work be compensated for any and all loss or adverse effect retroactive to the date on which the violation occurred. Claim to continue until correction is made.

EMPLOYES' STATEMENT OF FACTS: In the early spring of 1955, the Carrier lengthened some of its six existing tracts at its Ashland, Kentucky, less-carload freight transfer and also constructed a new seventh track. The effect of the additions and betterments made was to increase the car capacity of the facility from 57 to 83.

Beginning April 3, 1955, and continuing to June 2, 1955, the Carrier abolished ten clerical (Group 1) and thirteen trucker, cooper and stower (Group 3) positions at its Huntington, West Virginia transfer (Employes' Exhibit "H").

There is no more justification for argument that the Carrier must forever bill less carload freight for transfer to a certain point than there is to say that the Carrier must delay cars or handle them inefficiently in order that they may all be weighed on scales at some particular point.

The awards in prior cases fully support what has been done in this case and justify a denial award.

5. This claim should be denied in its entirety as something not requiring negotiation or handling under the collective bargaining agreement.

The evidence is fully to the effect that the changing of car lines in this case is not something new, but is the same thing which has been done without question since the beginning of railroads.

Service requirements are plainly such that such changes cannot properly be subject to collective bargaining agreement, but must be carried out by Management as a managerial responsibility pursuant to the rendition of prompt and efficient freight transportation service.

Examination of the current collective bargaining agreement shows that there is no rule in any manner covering such change in car lines, so that such changes have not been made a matter of collective bargaining.

Prior cases before the Third Division show that what was done in this case was fully in keeping with well established railroad practices and requirements and is not in violation of the Clerks' Agreement.

This claim should, therefore, be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The controversy now before us concerns the Huntington, West Virginia, and Ashland, Kentucky freight stations, two of the many such stations maintained by the Carrier to break package cars and sort the contents for further loading and shipment. The Huntington and Ashland stations are about 16 miles apart and in different seniority districts. Early in 1955, the Carrier enlarged its Ashland facilities and began to divert to Ashland cars formerly loaded to break bulk at Huntington. Cars from 22 different origins formerly billed to Huntington were, effective with this change, directed to Ashland. At the same time, the work of checking, unloading and transferring less-than-carload freight, moving in carloads from their points of origin, that was formerly performed by the Huntington employes, began to be handled at Ashland. During the spring of 1955, Carrier abolished ten clerical (Group 1) and thirteen Group 3 positions at Huntington, but established four clerical and five Group 3 positions at Ashland. These changes were accomplished unilaterally by Carrier and without consultation with the Brotherhood. The Huntington employes affected were not afforded an opportunity to follow their work to Ashland.

The Carrier maintains that the above-mentioned changes breached no provision of the controlling Agreement and emphasizes that they simply involved the elimination of a portion of the work at one point and the performance of more work at another. It points out that the station at which L.C.L. package cars are broken out is determined by Carrier in accordance with the volume and destination of traffic. The Carrier further insists that the employes in Huntington did not have exclusive right to this work and that it is its prerogative to have the work performed at the freight station that efficiency and economy dictate.

In our opinion, the real question presented by this record is whether or not the changes under consideration amounted to a removal of the work out of one seniority district and into another. Despite the Carrier's arguments to the contrary, we are satisfied that this question must be answered in the affirmative. The practical significance of this situation, the basic facts of which are undisputed, does not differ substantially from any case where the Carrier, for operational or other considerations, decides to withdraw work from the employes who theretofore had performed it and to assign it instead to employes in a different seniority district. There is no doubt but that the realistic and inevitable result of the changes, however they were accomplished, was to cause employes within the Huntington seniority district to lose work they had been performing to employes in another and entirely separate seniority district. The situation is to be distinguished from those where the work was actually abolished.

Rule 6 of the controlling Agreement, notably sections (c), (d), (e) and (f) thereof, provides that Ashland and Huntington are separate seniority districts that are not to be changed in the absence of agreement between the contracting parties. Those sections, considered together with Rules 1 (a) and (b), 3 and 17 (e), underline the importance of district seniority.

It is well settled that seniority is a valuable property right. See Award 4987. That right would be devoid of strength and meaning if it represented merely a paper designation and there was no work for its holders to perform. See Award 5078. The entire purpose and underlying spirit of the seniority provisions require that, in the interest of the employes' seniority, their statutory bargaining agent be consulted before any move of the type in question is made that will impair their valuable seniority rights. Accordingly, not even to consider the effect of the aforementioned changes with the Brotherhood constitutes a violation of Rules 1, 3 and 6 of the Agreement. To hold otherwise would be to encourage the emasculation of that Agreement. Manifestly, operational changes by the Carrier must be effected in a manner that is compatible with its contract commitments.

Consideration of evidence regarding past practice is not appropriate since the Agreement's provisions are sufficiently unambiguous on the point in question.

As to the argument that to sustain the claims would be to give the Brotherhood a veto over Carrier's operations, it should be noted that this is not a case where the Brotherhood declined to consider the changes and to meet with the Carrier in a bona fide attempt to lessen the impact of the changes upon the Huntington employes. The Brotherhood was not even consulted.

We cannot accept the Carrier's contention that to sustain the Brotherhood's position is tantamount to insisting that "once Carrier has certain

work performed at one point it must forever be handled at that point." All we hold in this case is that before making changes that will shift work out of one seniority district and into another to the obvious detriment of one group of employes, the Carrier must consult the appropriate bargaining representative of the employes affected in a bona fide effort to mitigate the impact of the changes upon those employes. In reaching this conclusion, we have considered the Agreement before us and not the equities of the situation. In our view, this requirement is basic and fundamental to the seniority rights prescribed by that Agreement. There is nothing in the requirement that is harsh, unreasonable or inconsistent with the duties and privileges of a Carrier.

Under the circumstances, the claims will be sustained. See Awards 6309, 4667 and 3964.

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 Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.

DISSENT TO AWARD NO. 9193, DOCKET NO. CL-8754

Insofar as this dispute is concerned, Carrier maintains breakbulk operations at both its Huntington and Ashland freight stations, 16 miles apart in separate seniority districts, and on or about April 12, 1955, it changed, at their originating point, its consignment of certain cars to Ashland that had previously been break-bulked at Huntington. The changes in consignment of such cars was in exercise of Carrier's prerogative to direct its operations in the interest of efficiency and economy and resulted in a force reduction of 23 clerical employes at Huntington as opposed to a force increase of 9 clerical employes at Ashland.

This Award No. 9193 erroneously holds that Carrier's change in consignment of these certain cars at their originating point, for breakbulking at Ashland rather than at Huntington constitutes a violation of its Agreement with its Clerks in that it is a transfer of work from Huntington to Ashland (from one seniority district to another) without negotiation, de-

spite the facts that (1) there is no Agreement provision requiring that Carrier handle through any given point any stated quantity of freight in terms of quantity or class or commodity, and (2) the L.C.L. cars involved did not originate in the Huntington seniority district and were not billed or destined to that district for handling; hence their being consigned, at their originating point, for break-bulking at Ashland rather than at Huntington was not a transfer of this work from Huntington to Ashland. Obviously, for the Majority to so hold is to usurp the function and prerogative of Carrier to direct the detail of its operations when not in conflict with its Agreement commitments which clearly is not the case here.

While it readily appears that equity considerations troubled the Majority and strongly influenced its decision in this instance, this Board should have confined itself to interpreting the Agreement Rules as written; equity is not a proper subject for consideration by this Board.

For the foregoing reasons, among others, the undersigned Carrier Members dissent to the holdings of the Majority in this Award No. 9193.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ J. F. Mullen

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 9193

DOCKET NO. CL-8754

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

NAME OF CARRIER: The Chesapeake and Ohio Railway Company (Chesapeake District)

Upon application of the Carrier involved in the above Award, the United States District Court for the Southern District of West Virginia has ordered that this Division interpret Award No. 9193 as to the meaning and application of the Award, as provided for in Section 3, First (m) and (q) of the Railway Labor Act, as approved June 21, 1934. In compliance with that order of the Court, entered on November 3, 1978, the following interpretation is made:

Initially, we are constrained to remind the parties that the purpose of an Interpretation is to clarify an Award. It is not a means to provide an avenue to reargue the original claim. Also, this Board has no authority to alter, change or modify the extent of an Award under the cloak of an interpretation. Rather, the Board is limited to interpreting an Award in the light of the circumstances which existed when the Award was rendered.

Award No. 9193 was handed down by this Board on January 18, 1960. Upon receipt of the sustaining Award, the parties to the dispute, i.e., the Petitioner Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and the Respondent Chesapeake and Ohio Railway Company, entered into a series of Agreements dated July 1, 1960 dealing with the application of the type of transfer of work situation which was involved in the Statement of Claim in Award No. 9193. In disposition of sustaining Award No. 9193, fifty-nine (59) employes were determined by the parties to have "suffered wage loss or were adversely affected" by the actions of Carrier that precipitated the dispute resolved by Award No. 9193; they were compensated accordingly.

Subsequently, forty-six (46) individuals instituted action in the United States District Court against Carrier alone alleging that they were "adversely affected" by Carrier's actions. It was the initiation and handling of this subsequent individual legal action against Carrier which has resulted in the Order of the United States District Court in Civil Action No. 1117 which reads in part:

> "In these consolidated actions, it would be particularly helpful if the Board would state in the award the names of the employees to be compensated, if any, and the amounts to which each is entitled. But even if the Board should choose not to state the names of any employees entitled to compensation and the amounts to which they are entitled, the Board should clarify the award in such a way as to establish a definite, clear and precise standard by which each of the claims of each of the petitioners may be judged and the amount of any compensation fixed and determined."

The Board derives its authority and jurisdiction from Section 3, First of the Railway Labor Act, as amended. It is not a court of equity. It can consider and decide only those matters which are properly presented to the Board by the parties to a dispute. This Board does not possess the authority or jurisdiction to name claimants in a dispute. The initiation and progression of a claim or grievance rests with the petitioning party to a dispute and - as required by Section 3, First (i) of the Railway Labor Act - must "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" before it is eligible to be presented to this Board. Under the Railway Labor Act and this Board's rules of procedure, we are limited to consideration of the issues and claimants which are included in the Statement of Claim as presented by the petitioning party to this Board.

In the instant case, when this Board sustained the claim that had been presented in Docket No. CL-8754, its understanding and intent for compensation was directed toward those employes who suffered wage loss as a result of Carrier's unilateral action in that case. In Award No. 9193 we clearly pointed out that:

"* * * seniority is a valuable property right. * * *."

and that:

"* * * In reaching this conclusion, we have considered the Agreement before us and not the equities of the situation. * * *."

Those individuals who have been identified by the parties to the dispute as the ones who, because of their seniority standing, suffered adverse effect in that they were unable to hold positions receiving similar or greater compensation are those who were intended to be made whole by Award No. 9193. The parameters of "adverse effect" as understood by practical railroad people go to seniority and/or wage loss sustained in a given fact situation. Under no circumstances did this Board by Award No. 9193 intend to convey benefits in the situations referred to in the Memorandum of Order of the United States District Court, Southern District of West Virginia, filed on September 30, 1975 in the instant legal action involving:

"cost of an automobile"

"paid for the hours it took him to travel"

"purchase (of) a second automobile"

nursing care for a disabled spouse, etc.

The treatment of compensation and "adverse effect" by adjustment boards - including this Board - has been generalized, but in practical railroad application usually does not extend beyond direct compensation for wage loss sustained. There were no special compensation or unique damage arguments advanced during the handling by this Board of Docket No. CL-8754, Award No. 9193 and the Award as issued was not intended to extend beyond actual wage loss demonstrated.

From our review of the record in this case, and after hearing the arguments of the representatives of the parties to the litigation here involved, including contentions as to potential claimants subject to call and on standby status, we can only conclude that the parties to the dispute have properly identified, and the Respondent has properly compensated, all of the employes who were

"adversely affected" by Carrier's actions as set forth in the Statement of Claim in Award No. 9193. Nothing more was intended by this Board.

Referee Harold M. Weston, who sat with the Division as a neutral member when Award No. 9193 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.