

RAILWAY LABOR ACT
SPECIAL BOARD OF ADJUSTMENT NO. 1087

Award No. 4
Case No. 4

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF ISSUES:

The Organization's Statement of the Issue:

Is the Carrier required to post information provided to the Union under Article IV, Section 6 of the Feb 7th Agreement on Company bulletin boards at the Union's request?

The Carrier's Statement of the Issue:

Does Article IV, Section 6 of the February 7, 1965 Mediation Agreement, and the decision in Issue No. 4 of SBA 1087 require the information which the Board has directed that the Carrier furnish the Organization be simultaneously posted for the employees' information at the same locations bulletins and other information are posted?

FINDINGS: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, within the meaning of the Railway Labor Act, as amended; that the Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing, which was held on September 10, 1999. The Board makes the following additional findings:

1. The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way craft.

2. On March 4, 1999, the four General Chairmen representing employees of the Organization filed letters requesting that the Carrier provide, pursuant to Article IV, Section 6 of the February 7, 1965 Mediation Agreement (hereafter, the "Agreement"), a list of employees protected under Article I, Section 1 of the Agreement, and information as to whether the protected employees' compensation was guaranteed under Section 1 or Section 2 of Article IV. The Organization also requested the days and hours worked by employees protected under Article I, Section 2.

3. On April 19, 1999 the Carrier responded by providing to each of the respective General Chairmen an alphabetical list of employees contained on BMWE rosters who had a service date of ten (10) or more years as of April 5, 1999. On May 3, 1999, the Organization advised the Carrier that its April 19 response was inadequate and reiterated its request. It further requested that "these same lists . . . be posted for employees' information at the same location that bulletins and other information are posted."

4. On May 7, 1999, the Carrier stated that it considered the information it supplied on April 19, 1999 to be fully responsive to the Organization's request; and that there were no employees who were subject to compensation under Article IV, Section 2. The Carrier further advised the Organization that one employee may be eligible for protection under Article I, Section 2, and furnished to the Organization his name as well as the days and hours guaranteed. The Carrier denied the Organization's request to simultaneously post such information on bulletin boards, stating it had no obligation under the Agreement, or in agreed-upon Questions and Answers dated November 24, 1965, to post such lists on bulletin boards, but advised the Organization that it "may disseminate this information to the employees . . . by any means [it] deem[s] appropriate." The Organization responded by presenting the instant dispute to the Board.

5. The Carrier argues that it has complied with the provisions of Article IV, Section 6, and that it has no obligation to simultaneously post on bulletin boards the information sought by the Organization. It points out that Article IV, Section 6 states:

The Carrier and the Organizations signatory hereto will

exchange such data and information as are necessary and appropriate to effectuate the purpose of this agreement.

6. The Carrier further contends that its position is supported by the Question and Answer to Question No. 2, which states as follows:

Question No. 2: "What are some examples of types of information that Carriers will furnish pursuant to the section?"

Answer to Question No. 2: Both parties are obligated by this section to provide any data and information that may be necessary to carry out the purposes of this agreement. In addition to the information concerning gross revenues and net ton miles discussed in connection with Article I, Section 3, carriers will now provide the organizations with respect to each craft *lists of the employees who are protected under Section 1 of Article I and those protected as seasonal employees under Section 2 of Article I.* Such lists with respect to employees protected under Section 1 of Article I will include information showing whether the employees' compensation is guaranteed under Section 1 or Section 2 of Article IV. In individual cases as they arise, the Carriers will, on request, *furnish information* showing the normal rate of compensation of the position held on October 1, 1964 or the base period months, earnings, and hours, depending on whether Section 1 or Section 2 of Article IV applies. With respect to seasonal employees covered by Section 2 of Article I, the list will show the period of seasonal employment in 1964, including the days and hours so employed. In individual cases as they arise, the Carriers will on request furnish the compensation pay with respect to such seasonal employment.

It is understood that *these lists are for information purposes* in carrying out the provisions of the Agreement and will be subject to correction in case of errors. (Emphasis added).

7. The Carrier claims that there is nothing in Article IV, Section 6 of the Agreement, or any other provision, that can be construed as requiring the Carrier to post the information on bulletin boards. It asserts that the Agreement merely provides that the parties signatory to the Agreement will exchange

information in order to comply with the terms of the Agreement.

8. The Carrier claims that its obligation to provide such information to the Organization under Article IV, Section 6 of the applicable Agreement has been constant for over 34 years, and has never contained any obligation to post the information required of it on bulletin boards. The Carrier points out that recently, the Agreement, and the September 26, 1996 Mediation Agreement which amended the Agreement, was interpreted by the parties and through arbitration to include the following obligation:

A list showing all employees who have 10 or more years of service with the Carrier and are eligible to be considered protected employees under the Agreement; an indication on the list of employees with 10 or more years of service denoting which of those employees the Carrier deems to be covered by Article I, Section 2 (seasonal); for those employees deemed to be seasonal employees under Article I, Section 2, the list shall include the number of days the employee worked during the base year; and such lists will be subject to periodic updates by the Carrier.

9. The Carrier further asserts that its position is supported by Award 65 of Special Board of Adjustment 605, rendered by Referee Milton Friedman, which considered whether the Carrier was obligated to provide information - under Article IV, Section 6 - regarding the number of days worked, the rates paid and compensation received by certain employees during the period 1962, 1963 and 1964. The Carrier points out that Referee Friedman determined that because the Agreement only required the Carrier to furnish such information "in individual cases as they arise," the Carrier had not violated the Agreement: "Had the parties to the Agreement meant to require the Carriers to provide such information for all employees in its employ, they would not have restricted it to 'individual cases as they arise'".

10. Citing further authority, the Carrier asserts it is a long established principle of contract construction that a right or claim may not be asserted which is not supported by the terms of the Agreement. The Carrier argues that the Organization's contention that it is obligated to post such lists on bulletin boards throughout its system is unsupported by the Agreement.

11. The Organization contends that Article IV, Section 6 of the Agreement obligates the Carrier to post the information it requested on carrier bulletin boards. The Organization points out that the language of Article IV, Section 6 was clarified in agreed-upon Questions and Answers dated November 24, 1965, and that said Questions and Answers were intended to "have the same force and effect as the provisions of the Agreement that have been thus interpreted."

12. The Organization further asserts that the Carrier's obligation was expanded by the Board in Award No. 65. According to the Organization, it was determined there that the Carrier was obligated to provide information related to compensation guarantees of "multi-rate" employees protected under Article I, Section 1 of the Agreement. The Organization contends that the additional information was found by the Board to be "necessary and appropriate" to carry out the parties' Agreement. The Organization further points out that the Board's determination was based on a finding that such information would be "of benefit to the affected employees" and could reduce complaints over the administration of the Agreement.

13. The Organization asserts that the same rationale is applicable here; it is "necessary and appropriate" for the Carrier to post the information provided to it pursuant to Section 6 on bulletin boards and other locations where the Carrier routinely disseminates information to employees. The Organization contends that the provision of such information is "necessary and appropriate" to the administration of the Agreement. It claims that information for filing claims on behalf of employees is received directly from affected employees. Therefore, the Organization claims, individual employees must be able to obtain information concerning their contractual rights, and the Carrier's view of their status under the Agreement in order to determine whether any claim should be presented. The Organization asserts that if the lists were posted and an employee with 10 or more years of service discovered his name was omitted, the employee would be on notice that the Carrier believed he was not entitled to protection.

14. The Organization further argues that requiring the

Carrier to post the requested information would not subject it to obligations not undertaken by many other carriers. The Union points out that the Burlington Northern Santa Fe Railway Company, the Union Pacific Railroad Company and the Sco Line Railroad Company all routinely post information requested by the Union here. The Organization contends that, assuming *arguendo* the cost of complying with its request were a legitimate concern, such cost is minimal. The Organization points out that it is not requesting that such information be mailed to each employee at his/her residence; it is merely asking that the information be placed on bulletin boards.

15. Finally, the Organization points out that its request does not require the Carrier to produce information of a type that it is not already required to produce. The Organization asserts that the Agreement requires the Carrier to post the information requested and that such information is "necessary and appropriate" to the administration of the Agreement. For these reasons, the Organization asserts that the answer to the employees' issue should be yes.

OPINION: The Board is persuaded that the Carrier's contention, that it is not obligated under the Agreement to post the information requested by the Organization on bulletin boards, is correct. Article IV, Section 6 of the Agreement states:

The Carrier and the Organizations signatory hereto will exchange such data and information as are necessary and appropriate to effectuate the purposes of the agreement.

In addition, the Question and Answer to Question No. 2 supports the Carrier's contention that it is not obligated to post the information required of it on bulletin boards.

There is nothing ambiguous about the provision of the Agreement, and its interpretation in the aforementioned Question and Answer: The Carrier is not required to post the information on bulletin boards. By its plain terms, the Carrier is obligated to provide information relating to the status of employees, to the Organization. The Agreement is silent as to any further requirement. Moreover, there is no evidence whatsoever that the

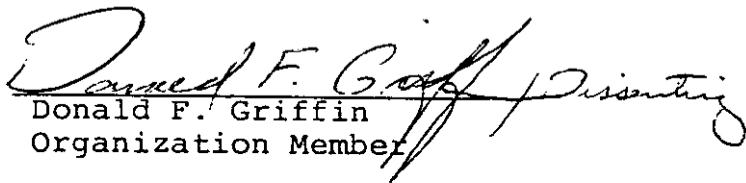
parties intended to construe the provision - at the time it was drafted or in its application over the last 34 years - to include any obligation on the part of the Carrier to post such information on bulletin boards. To hold otherwise would effectively rewrite the parties' Agreement in a manner inconsistent with both its plain language and the manner in which it has long been interpreted. Accordingly, the Board concludes that the Carrier has no obligation under Article IV, Section 6 of the Agreement to simultaneously post information concerning the status of employees on bulletin boards.

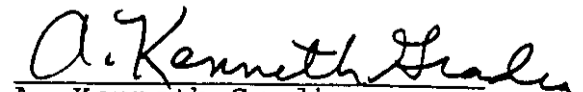
The Organization's assertion that its position is supported by Question No. 4, in which this Board held that the Carrier is required to provide information regarding the compensation paid to "multi-rate" employees, is unfounded. In Question No. 4, this Board, noting that it established the methodology for the multi-rate question by Opinion dated September 28, 1998, found that requiring the Carrier to provide the identity of multi-rate employees and the number of months guaranteed at each rate was "a logical consequence of that decision, and not the creation of a new agreement between the parties." The Board further found that information concerning multi-rate employees was both necessary and appropriate "to effectuate the parties' agreement."

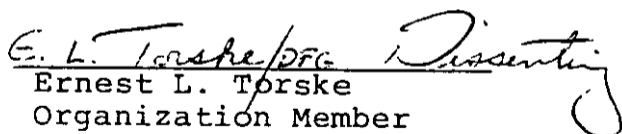
The Organization's contention that it is "necessary and appropriate" for the Carrier to post the required information on bulletin boards lacks merit. The Organization essentially asserts that if the information were posted on bulletin boards, employees will more readily learn of their status and be able to promptly file claims or grievances under the Agreement. While the posting of such information on bulletin boards may, as the Organization claims, make it easier for employees to learn of their status under the Agreement and be accomplished at little cost to the Carrier, such considerations are not germane to an interpretation of the plain language of the Agreement. Its arguments in this regard are more appropriately made in the context of negotiations to modify the Agreement to include such an obligation on the part of the Carrier. For the reasons indicated above, the Board finds that the purpose of the Agreement was carried out when the Carrier supplied to the Organization the information requested of it. Nothing more is required of the Carrier under the Agreement.

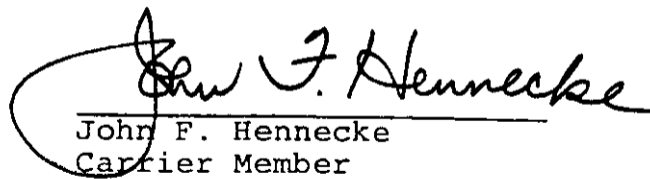
AWARD: The Organization's claim is dismissed.


E. William Hockenberry
Chair and Neutral Member


Donald F. Griffin
Organization Member


A. Kenneth Gradia
Carrier Member


Ernest L. Torske
Organization Member


John F. Hennecke
Carrier Member

Dated: January 20, 2000